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# FORMS RULES

AND

## General Orders in Bankruptcy

COLLATED, REVISED AND ANNOTATED BY

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AND

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and United States Commissioner*

SECOND EDITION

BY

MARSHALL S. HAGAR



ALBANY, N. Y.  
MATTHEW BENDER & COMPANY,  
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## PREFACE TO SECOND EDITION.

MUCH progress has been made in bankruptcy administration since 1910; the law has become better understood and appreciated by the community at large and its machinery brought to work more smoothly; the Supreme Court has, in a number of notable decisions, cleared up many mooted questions and pointed the way to a broad interpretation of the statute as opposed to such narrow construction of a remedial statute as would deny redress for failure to observe and distinguish with minute discernment and precision whether the remedy by review would lie in a particular instance under sections 24-a, 24-b or 25 of the Act. So also the Circuit Courts of Appeal have shown a leaning toward the same broad policy in widening as far as possible the time limit for proof of debt and in allowing amendments of informal proofs after expiration of time limit.

On the other hand the practice which has lately grown up in large commercial centers of allowing an assignee in the State Court, presumably of the debtor's own selection, to administer an estate after the filing of the petition in bankruptcy against the debtor has, in the opinion of the writer, proven in actual practice, in a majority of cases, detrimental to the interests of creditors, and it is sincerely to be hoped that the Courts in this respect will return to the original conception of the purpose and intent of the Bankruptcy Act.

The sudden death from accident of Mr. Thomas Alexander, the co-author of this work, removed from the Federal Court of New York City a man of comprehensive knowledge of Federal law and of practice and procedure under the Bankruptcy Act and his loss is much regretted.

The present edition has followed in the main the lines and arrangement of the former edition with such corrections and changes as have been deemed expedient or made necessary to accord with present practice. The first edition was published

just at the time the amendments of 1910 became effective and before the practice thereunder had become settled. Many additional forms have been added and the notes greatly extended to comprise the large number of decisions reported in the last six years. Editorial notes have been added, also the rules in bankruptcy of many other districts. A convenient time table of Procedure showing the time allowed for the performance of various acts required in bankruptcy practice with the appropriate reference to the Statute, Rules or General Orders has been added as a new feature, and it is believed will prove useful.

The author desires to express his grateful acknowledgment to Mr. Alexander Gilchrist, Jr., and Mr. William Tallman, Clerk and Deputy Clerk of the District Court of the United States for the Southern District of New York for their valuable advice in the compilation of the present volume and to those members of the profession who have so kindly contributed new forms or made suggestions for the improvement of the book.

NEW YORK, September, 1916.

MARSHALL S. HAGAR.



## PREFACE TO FIRST EDITION.

THE object of this work is primarily to furnish bankruptcy practitioners, referees, receivers and trustees with a working collection of forms and precedents useful in ordinary practice under the Act. Owing to the great diversity of construction, usage and practice in bankruptcy in various parts of the United States, it is not possible, nor would we attempt to furnish a set of forms or precedents which would be acceptable in all jurisdictions, nor to meet the exigencies of every case. The official forms prescribed by the Supreme Court of the United States have been found inadequate to the needs and methods of modern practice, and several have been held by the courts insufficient and demurrable. However, we have retained and included all of the official forms which are still used and found suitable for their purpose in a district where there is a large and complicated bankruptcy business, as *e. g.* in the Southern District of New York. These forms are designated by the word "Official" under their respective numbers to distinguish them from the other forms which are merely offered as suggestions or precedents derived from long experience in various phases of bankruptcy practice. We have endeavored to obtain, so far as possible, forms which have been passed upon by the courts and stood the test of judicial approval. Many forms have been obtained from other members of the Bar, to whom we acknowledge our great indebtedness. As regards arrangement, it has seemed wise to collect the forms under a system of titles in somewhat logical sequence; a feature which has not, so far as we know, heretofore been attempted in any bankruptcy treatise. The amendments of 1910 have made some radical changes in the law necessitating certain changes also in the forms, and these changes are indicated or suggested to the pleader.

A secondary object we have hoped to obtain is to furnish a concise compendium of decisions and authorities to date in the form of notes appended to the forms, wherever applicable. The



Bankruptcy Act in complete form as this year amended is also included, with that portion covered by the amendment indicated by italics. Another section is devoted to the General Orders of the Supreme Court in Bankruptcy, with annotations thereon.

Finally we have collated and included the local, "Rules in Bankruptcy" of many of the important centers throughout the country, and this feature should prove a great convenience to practitioners.

NEW YORK, September, 1910.

MARSHALL S. HAGAR,  
THOMAS ALEXANDER.

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**FORMS, RULES AND GENERAL ORDERS  
IN BANKRUPTCY.**

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# PART I.

## PETITION AND ADJUDICATION.

- FORM No. 1. Petition in Bankruptcy by Individual.
2. Debtor's Schedules, Oath and Summary Statement.
  3. Voluntary Petition by Corporation with Resolution by Board of Directors.
  4. Voluntary Petition of Partnership.
  5. Voluntary Petition of Partnership, all Partners not joining.
  6. Affidavit of Pauper in Voluntary Proceedings.
  7. Involuntary Petition by three Creditors against Individual.
  8. Involuntary Petition against a Corporation.
  9. Involuntary Petition by one Creditor against a Partnership.
  10. Subpoena to Alleged Bankrupt.
  11. Marshal's Return thereon.
  12. General Appearance of Bankrupt or Creditor.
  13. Petition of Creditor to intervene.
  14. Order allowing Intervention.
  15. Admission of Bankruptcy by a Corporation.
  16. Motion to dismiss for Defects appearing on Face of Petition.
  17. Order denying Motion to dismiss and Notice of Settlement.
  18. Denial of Bankruptcy.
  19. General Answer of Alleged Bankrupt.
  20. Answer alleging more than twelve creditors.
  21. Answer of Creditor.
  22. Demand for Jury Trial.
  23. Order for Jury Trial.
  24. Notice of Trial in Involuntary Proceeding.
  25. Order extending Time to Answer.
  26. Consent to withdraw Answer and for Adjudication.
  27. Order for Adjudication and Reference.
  28. Order of Reference in Judge's Absence.
  29. Order of Adjudication by Referee.
  30. Order denying Adjudication.
  31. Order dismissing Petition, vacating Receivership and Notice of Settlement.
  32. Order referring Issues to Special Master.
  33. Notice of Hearing before Special Master.
  34. Exceptions to Master's Report on Issues of Bankruptcy.
  35. Order overruling Report of Special Master dismissing Petition, etc.
  36. Order confirming Report of Special Master, dismissing Petition and referring Receiver's Application to Special Master.
  37. Respondent's Bill of Costs and Notice of Taxation.
  38. Affidavit and Order to show Cause to punish Bankrupt for Failure to file Schedules.
  39. Order that Bankrupt file Schedules.
  40. Affidavit to List of Creditors, prepared by Petitioning Creditors.
  41. Order dismissing Involuntary Proceedings by consent.
  42. Petition to vacate Adjudication and dismiss Voluntary Petition for want of Jurisdiction.
  43. Petition to vacate Adjudication in Involuntary Proceedings.
  44. Petition for Service by Publication.
  45. Order of Publication.
  46. Petition to amend Petition.
  47. Petition to transfer Proceedings to another District.
  48. Order transferring Proceedings to another District.

**FORM No. 1.**

[Official.]

**DEBTOR'S VOLUNTARY PETITION.**

To the Honorable .....,

Judge of the District Court of the United States,

for the ..... District of .....

The petition of ....., of.....in the county of.....,  
and district and State of ..... being by occupation a.....  
respectfully represents:

That he has had his principal place of business (or has resided, or has had  
his domicile) for the greater portion of six months next immediately preced-  
ing the filing of this petition at .....

..... within said judicial district; that he owes debts  
which he is unable to pay in full; that he is willing to surrender all his prop-  
erty for the benefit of his creditors, except such as is exempt by law, and desires  
to obtain the benefit of the Acts of Congress relating to Bankruptcy.

That the schedule hereto annexed, marked A, and verified by your peti-  
tioner's oath, contains a full and true statement of all his debts; and (so far  
as it is possible to ascertain) the names and places of residence of his creditors,  
and such further statements concerning said debts as are required by the pro-  
visions of said acts:

That the schedule hereto annexed marked B, and verified by your peti-  
tioner's oath, contains an accurate inventory of all his property, both real and  
personal, and such further statements concerning said property as are required  
by the provisions of said acts:

Wherefore your petitioner prays that he may be adjudged by the court to  
be a bankrupt within the purview of said acts.

.....,  
*Petitioner*

.....,  
*Attorney*

United States of America,..... District of .....ss:

I, ....., the petitioning debtor mentioned and  
described in the foregoing petition, do hereby make solemn oath that the  
statements contained therein are true, according to the best of my knowledge,  
information and belief.

.....,  
*Petitioner*

Subscribed and sworn to before me this..... day of .....,  
A. D., 19.....

.....,  
.....,  
.....,  
(Official Character.)



**FORM No. 2. — (Official).**  
**Schedule A.—Statement of all debts of Bankrupt.**

**SCHEDULE A. (1)**

*Statement of all creditors, who are to be paid in full, or to whom priority is secured by law*

CLAIMS WHICH HAVE PRIORITY.	Reference to Ledger or Voucher.	NAMES OF CREDITORS.	RESIDENCE. (If unknown that fact must be stated.)	WHEN AND WHERE CONTRACTED.	Nature and considera- tion of the debt, and whether contracted as partner or joint-con- tractor, and, if so, with whom.	AMOUNT.
						\$ <span style="float:right">c</span>
(1) Taxes and debts due and owing to the United States.						
(2) Taxes due and owing to the State of..... or to any county, district or municipality thereof.						
(3) Wages due workmen, clerks or servants to an amount not exceeding \$300 each, earned within three months before filing the petition.						
(4) Other debts having priority by law.					Total,	

\_\_\_\_\_, Petitioner.



SCHEDULE A. (3)

CREDITORS WHOSE CLAIMS ARE UNSECURED

(N. B.—When the name and residence (or either) of any drawer, maker, indorser or holder of any bill or note, etc. are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.)

[illegible]

Petitioner.





## ACCOMMODATION PAPER.

FORMS IN BANKRUPTCY.

	NAME OF HOLDERS.	RESIDENCES. (If unknown, that fact must be stated.)	Names and Residence of persons accommodated.	PLACE WHERE CONTRACTED.	Whether liability was contracted as partner or joint-contractor, or with any other person; and if so, with whom.	\$ C	AMOUNT.
Reference to Ledger or Voucher.						Total,	

## OATH TO SCHEDULE A.

UNITED STATES OF AMERICA, }

DISTRICT OF }

ss.

On this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19  
before me personally came \_\_\_\_\_  
the person mentioned in and who subscribed to the foregoing Schedule, and  
who, being by me first duly sworn, did declare the said Schedule to be a  
statement of all his debts, in accordance with the Acts of Congress relating  
to bankruptcy.

Subscribed and sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, A. D., 19

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[Official character.]

Schedule B. —Statement of all Property of Bankrupt.

SCHEDULE B. (1)

REAL ESTATE.

LOCATION AND DESCRIPTION OF ALL REAL ESTATE OWNED BY DEBTOR OR HELD BY HIM.	INCUMBRANCES THEREON, IF ANY, AND DATES THEREOF.	STATEMENT OF PARTICULARS RELATING THERETO.	Estimated Value.
			<div>\$</div> <div>c</div>
		Total,	

\_\_\_\_\_, Petitioner.

SCHEDULE B. (2)  
PERSONAL PROPERTY.

<p>a. Cash on hand.</p> <p>b. Bills of exchange, promissory notes, or securities of any description (each to be set out separately).</p> <p>c. Stock in trade, in..... business of ..... of the value of.....</p> <p>d. Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz.:</p> <p>e. Books, prints and pictures, viz.:</p> <p>f. Horses, cows, sheep and other animals (with number of each) viz.:</p> <p>g. Carriages and other vehicles, viz.:</p> <p>h. Farming stock and implements of husbandry, viz.:</p> <p>i. Shipping and shares in vessels, viz.:</p> <p>k. Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated, viz.:</p> <p>[l. Patents, copyrights and trademarks, viz.:</p> <p>m. Goods or personal property of any other description, with the place where each is situated, viz.:</p>	<p>\$</p>	<p>c</p>
<p>Total,</p>		

....., *Petitioner*.



SCHEDULE B. (3)  
CHOSSES IN ACTION.

		<div>\$</div> <div>c</div>
<p>a. Debts due petitioner on open account.</p>		
<p>b. Stocks in incorporated companies, interest in joint stock companies and negotiable bonds.</p>		
<p>c. Policies of insurance.</p>		
<p>d. Unliquidated claims of every nature, with their estimated value.</p>		
<p>e. Deposits of money in banking institutions and elsewhere.</p>		
	<p>Total</p>	

Petitioner.

SCHEDULE B. (4)

Property in reversion, remainder or expectancy, including property held in trust for the debtor, or subject to any power or right to dispose of or to charge.

[N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same as far as known to debtor.]

GENERAL INTEREST.	PARTICULAR DESCRIPTION.	SUPPOSED VALUE OF MY INTEREST.		
Interest in land.	<b>Total.....</b>	\$ <table><tr><td></td><td>c</td></tr></table>		c
		c		
Personal property.				
Property in money, stocks, shares, bonds, annuities, etc.				
Rights and powers, legacies and bequests.				
Property heretofore conveyed for benefit of creditors.	<b>Total,</b>	AMOUNT REALIZED FROM PROCEEDS OF PROPERTY CONVEYED.		
What portion of debtor's property has been conveyed by deed of assignment, or otherwise for benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, as far as known to debtor.		\$ <table><tr><td></td><td>c</td></tr></table>		c
	c			
What sum or sums have been paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy.				
		Petitioner.		

SCHEDULE B. (5)

A PARTICULAR STATEMENT of the property claimed as exempted from the operation of the acts of Congress relating to bankruptcy, giving each item of property and its valuation, and, if any portion of it is real estate, its location, description and present use.

VALUATION	
	\$
	c
<p>Military Uniform, arms and equipments.</p> <p>Property claimed to be exempted by state laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the state creating the exemption.</p>	<p>Total,</p>

\_\_\_\_\_, *Petitioner.*

SCHEDULE B. (6)

Books, Papers, Deeds and Writings Relating to Bankrupt's Business and Estate.

The following is a true list of all books, papers, deeds and writings relating to my trade, business, dealings, estate and effects, or any part thereof, which at the date of this petition, are in my possession, or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit or advantage; and also of all others which have been heretofore, at any time in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

BOOKS.	
DEEDS.	
PAPERS.	



## OATH TO SCHEDULE B.

UNITED STATES OF AMERICA, }  
DISTRICT OF }  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19  
before me personally came \_\_\_\_\_  
the person mentioned in and who subscribed to the foregoing schedule, and  
who, being by me first duly sworn, did declare the said schedule to be a  
statement of all his estate, both real and personal, in accordance with the  
acts of Congress relating to bankruptcy.

Subscribed and sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, A. D., 19

\_\_\_\_\_  
[Official character.]

## SUMMARY OF DEBTS AND ASSETS.

[From the Statements of the Bankrupt, in Schedules A and B.]

Schedule A.	1 (1)	Taxes and debts due United States.				
" "	1 (2)	Taxes due States, counties, districts and municipalities.				
" "	1 (3)	Wages.				
" "	1 (4)	Other debts preferred by law.				
Schedule A.	2	Secured claims.				
Schedule A.	3	Unsecured claims.				
Schedule A.	4	Notes and bills which ought to be paid by other parties thereto.				
Schedule A.	5	Accommodation paper.				
Schedule A. Total, . . .						
Schedule B.	1	Real Estate.				
Schedule B.	2--a.	Cash on hand.				
" "	2--b.	Bills, promissory notes, and securities.				
" "	2--c.	Stock in trade.				
" "	2--d.	Household goods, &c.				
" "	2--e.	Books, prints and pictures.				
" "	2--f.	Horses, cows and other animals.				
" "	2--g.	Carriages and other vehicles.				
" "	2--h.	Farming stock and implements.				
" "	2--i.	Shipping and shares in vessels.				
" "	2--k.	Machinery, tools, &c.				
" "	2--l.	Patents, copyrights and trade-marks.				
" "	2--m.	Other personal property.				
Schedule B.	3--a.	Debts due on open accounts.				
" "	3--b.	Stocks, negotiable bonds, &c.				
" "	3--c.	Policies of insurance.				
" "	3--d.	Unliquidated claims.				
" "	3--e.	Deposits of money in banks and elsewhere.				
Schedule B.	4	Property in reversion, remainder, trust, &c.				
Schedule B.	5	Property claimed to be exempted.				
Schedule B.	6	Books, deeds and papers.				
Schedule B. Total, . . .						

NOTES.

**Voluntary Proceedings and Schedules.**

**References.**—Bankruptcy Act Secs. 1 (1) (20), 2 (1), 4a, 18a, c, 59a, g.

**General Orders IV, V, VI, XI.**

**See Local District Rules.**

Petition and schedules in voluntary proceedings should be drawn and verified in triplicate and filed always with the clerk.

In re Sykes, 6 Am. B. R. 264; 106 Fed. 669.

In re Wolf, 2 Am. B. R. 322; 94 Fed. 110.

**Must be accompanied by fees or affidavit *in forma pauperis*.**

Filing of a voluntary petition not an act of bankruptcy, merely institutes a proceeding in which the Court acquires jurisdiction to adjudicate, if the facts warrant.

In re Ceballos & Co., 20 Am. B. R. 459; 161 Fed. 445.

Jurisdiction attaches at once upon the filing of the petition. A caveat to all the world. In re Billing, 17 Am. B. R. 80; 145 Fed. 395.

Adjudication will be granted where voluntary petition sets forth the jurisdictional requirements. In re Carbone, 13 Am. B. R. 55.

A voluntary petition which schedules no dischargeable debt may be dismissed.

In re Colaluca, 13 Am. B. R. 292; 133 Fed. 255.

An adjudication in voluntary bankruptcy takes effect as of date the petition is filed so that the title of the trustee to property relates back to that date.

Crowe v. Baumann, (D. C. N. Y.), 27 Am. B. R. 100; 190 Fed. 399.

**Who may file voluntary petition.** Since Amendment of 1910, any person except a municipal, railroad, insurance or banking corporation.

Debtor owing but one provable debt, and with no assets may file.

In re Schwaninger, 16 Am. B. R. 427; 144 Fed. 555.

**Infant.**—In re Duguid, 3 Am. B. R. 794; 100 Fed. 274. In re Brice, 2 Am. B. R. 197; 93 Fed. 942.

In re Eidemiller, 5 Am. B. R. 570; 105 Fed. 595. In re Walrath, 24 Am. B. R. 541; 175 Fed. 243. In re Penzansky (D. C. Mass.), 8 Am. B. R. 99.

As to infant partner, see,

In re Dunnigan Bros., 2 Am. B. R. 628; 95 Fed. 428 and foot note. In re Duguid, (*supra*).

**Lunatic.**—In re Stein (C. C. A. 7th Cir.), 11 Am. B. R. 536; 127 Fed. 547; 62 C. C. A. 272.

In re Eisenberg (D. C. N. Y.), 8 Am. B. R. 551; 117 Fed. 786.

In re Funk (D. C. Ia.), 4 Am. B. R. 96; 101 Fed. 244.

Subsequent insanity does not abate the proceeding.

In re Kehler (C. C. A. 2d. Cir.), 19 Am. B. R. 513; 159 Fed. 55; 86 C. C. A. 245, *rev'g*, 18 Am. B. R. 596; 153 Fed. 235.

**Married Woman.**—McDonald v. Tefft Weller Co. (C. C. A. 5th Cir.), 11 Am. B. R. 800; 128 Fed. 381; 63 C. C. A. 123.

**Alien.**—In re Clisdell, 2 Am. B. R. 424; 101 Fed. 246.

**Indian.**—In re Rennie, 2 Am. B. R. 182.

In re Russie, 3 Am. B. R. 6; 96 Fed. 608.

In States where system of community property prevails husband and wife may file joint petition.

In re Ray, 1 Nat. Bank. News 276.

**Filing voluntary petition while involuntary petition is pending.**

**Practice as to adjudication.**

Fully discussed in:

In re New Chattanooga Hardware Co. (D. C. Tenn.) 27 Am. B. R. 77; 190 Fed. 241.

In re Beiermeister Bros. Co., 31 Am. B. R. 474; 208 Fed. 945.

Germania Nat. Bank of Lachenmaier (C. C. A. 7th Cir.), 29 Am. B. R. 325; 203 Fed. 32; 121 C. C. A. 368.

In re Stegar (D. C. Ala.), 7 Am. B. R. 665; 113 Fed. 978.

In re Waxelbaum (D. C. N. Y.), 3 Am. B. R. 392; 98 Fed. 589.

(Contra) In re Dwyer (D. C. No. Dak.), 7 Am. B. R. 532; 112 Fed. 777.

As to right of individual partner to file petition though firm has been refused a discharge in previous proceedings. In re Feigenbaum, 7 Am. B. R. 339; 151 Fed. 508.

Where there is no estate, no claims proved and no trustee appointed bankrupt may withdraw voluntary petition.

In re Hebbart, 5 Am. B. R. 8; 104 Fed. 322.

See, on dismissal by consent of parties after adjudication on motion of bankrupt.

In re McKee (D. C. Tex.), 32 Am. B. R. 731, 214 Fed. 885.

Answer cannot be interposed to voluntary petition.

In re Jehu, 2 Am. B. R. 498; 94 Fed. 638.

No legal obligation on an insolvent debtor to file a voluntary petition in bankruptcy.

Richmond Standard Steel Spike and Iron Co. v. Allen (C. C. A. 4th Cir.), 17 Am. B. R. 583; 148 Fed. 657; 78 C. C. A. 389.

Adjudication not conclusive on creditors, although not appealed from and creditors may by petition ask a dismissal of the proceedings upon facts appearing on the bankrupt's examination and showing that the court is without jurisdiction.

In re Garneau (C. C. A. 7th Cir.), 11 Am. B. R. 679; 127 Fed. 677; 62 C. C. A. 403.

Objection made after adjudication comes too late to be effective was held in Dodge v. Kenwood Ice Co. (C. C. A. 8th Cir.), 29 Am. B. R. 586; 204 Fed. 577; 123 C. C. A. 103; aff'g, In re Kenwood Ice Co. (D. C. Minn.), 26 Am. B. R. 499; 189 Fed. 525.

#### Sec. 2 (1).

**Six months period.**—In re Ray, 2 Am. B. R. 158.

In re Plotke (C. C. A. 7th Cir.), 5 Am. B. R. 171; 104 Fed. 964; 44 C. C. A. 282.

In re Harris, 11 Am. B. R. 649.

In re Tully, 19 Am. B. R. 604; 156 Fed. 634.

Removal from one district to another to acquire residence must be bona fide.

In re Garneau (supra).

**Where petition should be filed.**

**Domicile and Residence.**

Domicile determined by intent and fact. In re Williams, 3 Am. B. R. 677; 99 Fed. 544. In re Berner, 3 Am. B. R. 325. In re Grimes, 2 Am. B. R. 160; 94 Fed. 800.

In re Lipphart (D. C. N. Y.), 28 Am. B. R. 705; 201 Fed. 103.

In re Garneau (C. C. A. 7th Cir.), 11 Am. B. R. 679; 127 Fed. 677; 62 C. C. A. 403.

In re Kingsley, 20 Am. B. R. 427; 160 Fed. 275.

**Principal place of business.**—In re Brice, 2 Am. B. R. 197; 93 Fed. 942.

In re Guanacevi Tunnel Co. (C. C. A. 2d Cir.), 29 Am. B. R. 229 (and foot note); 201 Fed. 316; 119 C. C. A. 554.

[See, Cases cited under Invol. Pet., *infra*, p. 44.]



SCHEDULES.

Official forms must be used.

Mahoney et al. v. Ward, 3 Am. B. R. 770; 100 Fed. 278. In re McClintock, 13 Am. B. R. 606. In re City Contracting and Building Co. (D. C. Haw), 30 Am. B. R. 133. Failure to precisely observe form not necessarily fatal.

Burke v. Guarantee Title and Trust Co. (C. C. A. 3rd Cir.), 14 Am. B. R. 31; 134 Fed. 562; 67 C. C. A. 486.

In re Soper and Slada, 1 Am. B. R. 193.

As a representation that the property set forth is all the property known to bankrupt. Johnson v. United States (C. C. A. 1st Cir.), 20 Am. B. R. 724; 163 Fed. 30; 89 C. C. A. 509.

Ditto marks should not be used.

In re Mackey, 1 Am. B. R. 593.

Of vital importance that names and addresses should be written with care.

Liesum v. Krauss, 71 N. Y. Supp. 1022; 35 N. Y. Misc. 376. Westheimer v. Howard (N. Y. Sup. Ct.), 14 Am. B. R. 547; 47 N. Y. Misc. 145; 93 N. Y. Supp. 518.

Abbreviations should be avoided.

Sutherland v. Lasher (N. Y. Sup. Ct.), 11 Am. B. R. 780; 41 Misc. (N. Y.) 249.

All creditors should be scheduled even if debt is barred by Statute of Limitations, but scheduling the latter not a revival of the debt.

In re Lipman, 2 Am. B. R. 46; 94 Fed. 353.

In re Resler, 2 Am. B. R. 602; 95 Fed. 304.

When claim has been reduced to judgment, record holder should be scheduled, whoever may be actual holder.

Sellers v. Bell (C. C. A. 5th Cir.), 2 Am. B. R. 529; 94 Fed. 80; 36 C. C. A. 502.

That non-assignable claims need not be scheduled has been held in Louisiana Sup. Ct., as to claim based on libel. Irion v. Knapp, et al., 31 Am. B. R. 891. Creditor may institute proceeding to compel bankrupt to file schedules. In re Brockton Ideal Shoe Co. (C. C. A. 2d Cir.), 29 Am. B. R. 76; 200 Fed. 745; 119 C. C. A. 189. [See Form No. 38.]

[As to partnership schedule, see notes following Form No. 4.]

When debt not properly scheduled.—Weidenfeld v. Tillinghast (City C. N. Y.), 18 Am. B. R. 531; 54 Misc. (N. Y.) 90; 104 N. Y. Supp. 712.

Street number omitted.

Cagliostro v. Indelle, 17 Am. B. R. 685; 53 Misc. (N. Y.) 44; 102 N. Y. Supp. 918.

Haack v. Theise, 16 Am. B. R. 699; 51 Misc. (N. Y.) 3.

Kreitlein v. Ferger (U. S. Sup. Ct.), 34 Am. B. R. 862; rev'g s. c. 28 Am. B. R. 908.

Columbia Bank v. Birkett (U. S. Sup. Ct.), 12 Am. B. R. 691; 195 U. S. 345; 49 L. Ed. 231, aff'g, s. c. (Ct. App. N. Y.), 9 Am. B. R. 481; 174 N. Y. 112; aff'g 65 App. Div. 615.

Schedule of articles claimed as exempt not mandatory.

Burke v. Guarantee Title and Trust Co. (C. C. A. 3rd Cir.), (*supra*).

Lipman v. Stein (C. C. A. 3rd Cir.), 14 Am. B. R. 30; 134 Fed. 235; 67 C. C. A. 17.

In re McClintock, 13 Am. B. R. 606.

Scheduling notes, "original payee."

Broadway Trust Co. v. Mannheim (N. Y. Sup. Ct.), 14 Am. B. R. 122; 47 Misc. (N. Y.) 415.

Hazard Manufacturing Co. v. Brown, 25 Am. B. R. 903.

"Original mortgagee," Mueller v. Goerlitz (N. Y. Sup. Ct.), 17 Am. B. R. 687; 53 Misc. (N. Y.) 53; 103 N. Y. Supp. 1037.

Guasti v. Miller (Ct. App. N. Y.), 26 Am. B. R. 797; 203 N. Y. 259; aff'g 144 App. Div. 898.

Grabner v. Gault, 103 App. Div. (N. Y.) 511.

McCreery and Co. v. Brown (Pa. Ct. Com. Pl.), 29 Am. B. R. 238.

**When business address not sufficient.**

McKee v. Preble et al. (N. Y. App. Div.), 31 Am. B. R. 852; 154 App. Div. (N. Y.)

156.

Reasonable effort must be made to ascertain residence of creditor.

Parker v. Murphy (Mass. Sup. Jud. Ct.), 31 Am. B. R. 646.

Amendment by bankrupt to insert debts after estate is closed; when not allowed.

In re Sayer, 32 Am. B. R. 90; 210 Fed. 397.

In re Spicer, 16 Am. B. R. 802; 145 Fed. 431.

**Verification of schedules.**—May be verified before State or Federal officers.

Oaths and each separate page of schedules should be signed by the bankrupt.

See, In re McConnell, 11 Am. B. R. 418.

Corporate authorization must be averred.

In re Jefferson Casket Co. (D. C. N. Y.), 25 Am. B. R. 663; 182 Fed. 689.

President no implied authority to sign and verify under N. Y. statute s. c. (*supra*).

**False oath as to schedule.**—A bankrupt not guilty of making a false oath because he omits from schedules securities which are worthless.

In re McCrea (C. C. A. 2nd Cir.), 20 Am. B. R. 412; 161 Fed. 246; 88 C. C. A. 282.

**Admissibility of schedules in evidence.**—Not admissible against bankrupt in criminal proceedings.

Johnson v. United States (C. C. A. 1st Cir.), 20 Am. B. R. 724; 163 Fed. 30; 89 C. C. A. 509.

United States v. Chambers (C. C. N. Y.), 13 Am. B. R. 708; 135 Fed. 1023.

United States v. Green, 34 Am. B. R. 405.

When competent on question of insolvency and preferential transfer.

In re Mandel (C. C. A. 2nd Cir.), 135 Fed. 1021; 68 C. C. A. 546; aff'g 10 Am. B. R. 774; 127 Fed. 863.

In action to recover a preference.

Utah Association of Credit Men v. Boyle Furniture Co. (Utah Sup.), 26 Am. B. R. 867.

Hackney v. Hargreaves Bros., 13 Am. B. R. 164; 3 Neb. 676.

In re Docker-Foster Co. (D. C. Pa.), 10 Am. B. R. 584.

[See, Chamberlyne on "Evidence," p. 3793.]

**Criminating statements in schedules.**

When bankrupt excused from filing on constitutional grounds.

Podolin et al. v. Leshner Warner Dry Goods Co. (C. C. A. 3rd Cir.), 31 Am. B. R. 796; 210 Fed. 97; 126 C. C. A. 611; aff'g In re Podolin (D. C. Pa.), 30 Am. B. R. 576; 205 Fed. 563.

See also, s. c. 29 Am. B. R. 406; 202 Fed. 1014.

**FORM No. 3.****VOLUNTARY PETITION BY CORPORATION WITH RESOLUTION OF  
BOARD OF DIRECTORS.**

To the Honorable .....,  
 Judge of the District Court of the United States,  
 for the ..... District of .....

The petition of ..... of ..... in the city of .....  
 respectfully represents:

That it is a corporation duly created, organized and existing under and by virtue of the laws of the State of ....., and is not a municipal, railroad, insurance or banking corporation; that it has had its principal place of business and has carried on its principal business for the greater portion of six months next immediately preceding the filing of this petition at No..... in the city of ..... within said judicial district; that it owes debts which it is unable to pay in full; that it is willing to surrender all of its property for the benefit of its creditors, except such as is exempt by law, and desires to obtain the benefit of the Acts of Congress relating to bankruptcy.

That the schedule hereto annexed, marked A, and verified by your petitioner's oath contains a full and true statement of all its debts and (so far as it is possible to ascertain) the names and places of residence of its creditors and such further statements concerning said debts as are required by the provisions of said acts:

That the schedule hereto annexed marked B, and verified by your petitioner's oath, contains an accurate inventory of all its property, both real and personal, and such further statements concerning said property as are required by the provisions of said acts:

That at a meeting of the board of directors of your petitioner duly called and held on the ..... day of ..... 191..., at which all of its directors were present, the following preamble and resolution were duly and unanimously adopted, viz.:

"Whereas this corporation ..... is unable to pay its debts and is insolvent within the meaning of the Acts of Congress relating to bankruptcy:

Resolved, That this corporation petition the United States District Court for the ..... District of ....., for its adjudication as a bankrupt, and that ....., the president of this corporation, be and he hereby is authorized and directed to make, verify and file all such petitions, schedules and other papers as may be requisite or necessary to procure such adjudication."

Wherefore your petitioner prays that it may be adjudged by the Court to be a bankrupt within the purview of said acts.

.....,  
By.....,  
*Petitioner.*  
.....,  
*Attorneys for Petitioner,*  
Office and postoffice address,  
..... Street,  
City of .....

United States of America  
..... District of ..... } ss.:  
County of ..... }

I ..... am the ..... (insert official capacity) of ..... the petitioning debtor mentioned and described in the foregoing petition, and I do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

Subscribed and sworn to before me this..... day of.....  
19....  
*(Official Character.)*

NOTES.

**Power of corporate board of directors to authorize filing of voluntary petition in absence of statutory limitations.**

Dodge v. Kenwood Ice Co. (C. C. A. 8th Cir.), 29 Am. B. R. 586; 204 Fed. 577; 123 C. C. A. 103; aff'g In re Kenwood Ice Co. (D. C. Minn.), 26 Am. B. R. 499; 189 Fed. 525.

In re Guanacevi Tunnel Co. (C. C. A. 2nd Cir.), 29 Am. B. R. 229; 201 Fed. 316; 119 C. C. A. 554.

In re Foster Paint and Varnish Co. (D. C. Pa.), 31 Am. B. R. 548; 210 Fed. 652.

Authority of board notwithstanding State statute prohibiting any sale, assignment or transfer of property without consent of stockholders.

Bell v. Blessing (C. C. A. 9th Cir.), 35 Am. B. R. 672; 225 Fed. 750.

See, on corporate authorization.

In re Jefferson Casket Co. (D. C. N. Y.), 25 Am. B. R. 663; 182 Fed. 689.

[See notes following Form No. 2.]



**FORM No. 4.**

**VOLUNTARY PARTNERSHIP PETITION.**

To the Honorable .....

Judge of the District Court of the United States,

for the ..... District of .....

The petition of .....  
.....  
respectfully represents:

That your petitioners .....  
....., have been partners under the firm name of ..... having  
their principal place of business at No. .... in the  
..... of ..... in the County of .....  
and ..... District of ..... and State of .....  
for the greater portion of the six months next immediately preceding the  
filing of this petition; that the said partners owe debts which they are unable  
to pay in full; that your petitioners are willing to surrender all their property  
for the benefit of their creditors, except such as is exempt by law, and desire  
to obtain the benefit of the Acts of Congress relating to bankruptcy.

That the schedule hereto annexed, marked A, and verified by .....  
oath ..... contains a full and true statement of all the debts, of  
said partners, and, as far as possible, the names and places of residence, of their  
creditors, and such further statements concerning said debts as are required  
by the provisions of said Acts.

That the schedule hereto annexed, marked B, verified by .....  
oath ..... contains an accurate inventory of all the property,  
real and personal, of said partners, and such further statements concerning  
said property, as are required by the provisions of said Acts.

And said ..... further states that the schedule hereto  
annexed, marked C, verified by his oath, contains a full and true statement  
of all his individual debts, and, as far as possible the names and places of  
residence of his creditors, and such further statements concerning said debts  
as are required by the provisions of said Acts; and that the schedule hereto  
annexed, marked D, verified by his oath, contains an accurate inventory of  
all his individual property, real and personal, and such further statements  
concerning said property as are required by the provisions of said Acts.

And said ..... further states that the schedule hereto  
annexed, marked E, verified by his oath, contains a full and true statement  
of all his individual debts, and as far as possible, the names and places of  
residence of his creditors and such further statements concerning said debts  
as are required by the provisions of said Acts; and that the schedule hereto  
annexed, marked F, verified by his oath, contains an accurate inventory of  
all his individual property, real and personal, and such further statements  
concerning said property as are required by the provisions of said Acts.

Wherefore your petitioners pray that the said firm and each of them as individuals may be adjudged by a decree of the court to be bankrupts within the purview of said Acts.

.....,  
 .....  
 .....  
 .....  
 .....  
 .....

*Petitioners.*

.....

*Attorney.*

United States of America, ..... District of .....ss.:  
 .....  
 ..... and .....  
 ....., the petitioning debtors mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of their knowledge, information and belief.

.....  
 .....  
 .....  
 .....  
 .....  
 .....

*Petitioners.*

Subscribed and sworn to before me this ..... day of .....  
 A. D., 19....

.....  
 .....

*(Official Character.)*

#### NOTES.

**Act, Secs. 1, (19), 4, 5. General Order VI.**

**Co-partnership petition.**—Official form No. 2 not to be relied upon if adjudication of the partners as individuals is desired.

Prayer should ask for an adjudication of the individuals as well as of the firm.

In re Wing Yick Co., 13 Am. B. R. 757.

In re Lenoir-Cross & Co. (D. C. Tenn.), 35 Am. B. R. 774; 226 Fed. 227.

In re Stokes, 6 Am. B. R. 262; 106 Fed. 312.

In re Sanderlin, 6 Am. B. R. 384; 109 Fed. 857.

Schedules should be complete both for the firm and for each partner.

In re Gay, 3 Am. B. R. 529; 98 Fed. 870.

In re Langslow, 1 Am. B. R. 258; 98 Fed. 869; 1 N. B. N. 232.

If a partner is without the jurisdiction or refuses to join, the fact should be stated. If the former, he should be brought in by publication, as if the petition was against him.

See Collier (10th Ed.), p. 157.

**FORM No. 5.****VOLUNTARY PETITION OF PARTNERSHIP, ALL PARTNERS NOT JOINING.**

To the Honorable .....

Judge of the District Court of the United States,

for the ..... District of .....

The petition of ....., and ....., of the .....  
of ....., in the County of ....., in said district, by occupation  
respectively ..... and ....., respectfully shows:

That your petitioners and ..... are and have been partners under the style of ....., which partnership has had its principal place of business at the ..... of ....., in the County of ....., in said district, for the greater portion of the six months next immediately preceding the filing of this petition; and that said partnership is insolvent and owes debts in excess of one thousand dollars (\$1,000).

That your petitioners as individuals each owes debts which he is unable to pay in full.

That such partnership and your petitioners are willing to surrender its and their property for the benefit of its and their creditors, respectively, except such as is exempt by law, and desire to obtain the benefits of the bankruptcy law of 1898, as amended.

That the said ....., whose place of residence is in the ..... of ....., in the ..... district of ....., has refused and still refuses to join in this petition; that he is neither a wage-earner nor a person engaged chiefly in farming or the tillage of the soil, and as an individual, owes debts which he is unable to pay in full. [State whether non-consenting partner is solvent or insolvent.]

[That such partnership has been dissolved, but there has as yet been no final settlement.]

That the schedule hereto annexed marked A, and verified by your petitioners' oaths, contains a full and true statement of all the debts of said partnership, and (so far as it is possible to ascertain) the names and residences of its creditors, and such further statements concerning said debts as are required by said law.

That the schedule hereto annexed marked B, and verified by your petitioners' oaths, contains an accurate inventory of all of the property of said partnership, both real and personal, and such further statements concerning said property as are required by said law.

That the schedule hereto annexed marked C, and verified by the oath of your petitioner, ....., contains a full and true statement of all of his individual debts, and (so far as it is possible to ascertain) the names and places of residence of his individual creditors, and such further statements concerning said debts as are required by said law.

That the schedule hereto annexed marked D, and verified by the oath of your petitioner, ....., contains an accurate inventory of all of his individual property, both real and personal, and such further statements concerning said property as is required by said law.

[Insert similar enumeration for each partner, making schedule "E, F, etc."]

Wherefore, your petitioners pray that such partnership and your petitioners as individuals may be adjudged bankrupt within the purview of such bankruptcy law of 1898 as amended, and that service of this petition with a subpoena be made upon ....., such non-consenting partner, to show cause why such partnership should not be adjudged bankrupt, and that such proceedings be had as are provided in said law and General Order VIII. of the Supreme Court and as the Court may order.

.....,  
.....,  
*Petitioners.*

.....  
*Attorney for Petitioners,*  
(Address.)

[Verification.]

(Attach schedules and summary statement for partnership, and individual schedules and summary statement for each petitioning partner.)

NOTES.

Sec. 5h.  
See General Order VIII.

Proceeding voluntary as to petitioning partner and involuntary as to non-joining partner.

Before adjudication can be had, a subpoena must issue and be served with a copy of petition on the latter and he may defend in same way as if an involuntary petition were filed against him.

In re Murray (*infra*).  
In re Junck and Balthazard (D. C. Wis.), 22 Am. B. R. 298; 169 Fed. 481.

If non-assenting partner is an absentee from jurisdiction he must be brought in by publication.

See in re Murray (D. C. Ia.), 3 Am. B. R. 601; 96 Fed. 600.  
In re Russell, 3 Am. B. R. 91; 97 Fed. 32.

The filing of a petition by one partner against co-partners cannot be deemed an act of bankruptcy on the part of the partnership.

In re Ceballos and Co. (D. C. N. J.), 20 Am. B. R. 459; 161 Fed. 445.  
In re Hansley and Adams (D. C. Cal.), 36 Am. B. R. 1; 228 Fed. 564.  
See, In re J. and M. Schwartz (D. C. N. Y.), 30 Am. B. R. 344; 204 Fed. 326.

The proceedings as to creditors is, however, voluntary and creditor may not file answer.

In re Junck and Balthazard (*supra*).  
What non-assenting partner may plead; may set up defense of solvency, and entitled to jury trial.  
In re Forbes (D. C. Mass.), 11 Am. B. R. 787; 128 Fed. 137.  
Under General Order VIII entitled to same notice as if petitioned against.



In re Altman, 2 Am. B. R. 407; 95 Fed. 263; aff'g 1 Am. B. R. 689.

In re Laughlin, 3 Am. B. R. 1; 96 Fed. 589.

In re Carleton (D. C. Mass.), 8 Am. B. R. 270; 115 Fed. 246.

In re Freund, 1 Am. B. R. 25.

Whether court has jurisdiction to adjudge non-consenting partner a bankrupt individually.

In re Meyer (C. C. A. 2nd Cir.), 3 Am. B. R. 559; 98 Fed. 976; 39 C. C. A. 368; aff'g, 1 Am. B. R. 565; 92 Fed. 896.

(See notes following Form No. 9.)

Effect of objection by non-joining partner, to petition filed and adjudication had without notice to him

In re City Contracting and Building Co. (D. C. Haw.), 20 Am. B. R. 171.

Court of bankruptcy has no jurisdiction to administer upon estate of an alleged secret partner without declaring him a bankrupt or finding him insolvent.

In re Kramer and Muchnick, (D. C. Pa.), 33 Am. B. R. 223; 218 Fed. 138.

## FORM No. 6.

### AFFIDAVIT OF PAUPER IN VOLUNTARY PROCEEDINGS.

In the District Court of the United States,  
for the ..... District of .....

<p>IN THE MATTER</p> <p>OF</p> <p>.....</p> <p><i>Bankrupt.</i></p>
---

State of ..... }  
County of ..... } ss.:

..... being duly sworn, deposes and says: that he is the petitioner herein and resides (or has his principal place of business) at..... in the city of.....

That he is wholly without money or means and cannot obtain the money with which to pay the necessary fees for the filing of this petition and that he has agreed to pay his attorney for his services the sum of \$..... no part of which has been paid.

Sworn to before me this.....  
day of ..... 19....

NOTES.

Sec. 51a (2) General Order XXXV (4).

Comp. Rules No. Dist. of N. Y. 5.

Duty of clerk as to receipt of.

In re Mason, 25 Am. B. R. 73; 181 Fed. 899.

Sellers v. Bell (C. C. A. 5th Cir.), 2 Am. B. R. 529; 94 Fed. 801; 36 C. C. A. 502.

In re Hines, 9 Am. B. R. 27; 117 Fed. 790.

In re Collier, 1 Am. B. R. 182; 93 Fed. 191.

In re Levy, 4 Am. B. R. 108; 101 Fed. 247.

In re Plimpton, 4 Am. B. R. 614; 103 Fed. 775.

FORM No. 7.

**INVOLUNTARY PETITION BY THREE CREDITORS  
AGAINST INDIVIDUAL.**

To the Honorable .....,  
Judge of the District Court of the United States,  
for the ..... District of .....

The petition of ....., of the City of ....., and  
of ....., of the City of ....., and of.....  
....., of the City of ....., respectfully shows:

*First.* That ....., has for the greater portion of the six  
months next preceding the date of the filing of this petition, resided, (or had  
his principal place of business) (or had his domicile) in the City of.....  
....., State and District aforesaid, and owes debts to the amount of one  
thousand dollars and upwards, and is insolvent, and is neither a wage-earner  
nor a person engaged principally in farming or the tillage of the soil, but is  
by occupation a .....

*Second.* That your petitioners are creditors of the said .....,  
having provable claims against him amounting in the aggregate in excess  
of securities held by them to the sum of five hundred dollars; that none of  
your petitioners is entitled to priority of payment of his said claim within  
the meaning of Section 64 (b) of the United States Bankruptcy Act and  
amendments thereof, nor has any of your petitioners received a preference  
within the meaning of Section 60 (a)-(b) of such law as amended.

*Third.* That the nature and amount of your petitioners' claims are as  
follows:

.....: The claim of petitioner is for: .....

[Here set forth fully as to amount, consideration, etc.]

of which no part has been paid though duly demanded.

.....: The claim of petitioner is for: .....

of which no part thereof has been paid though duly demanded.

.....: The claim of petitioner is for: .....  
of which no part thereof has been paid though duly demanded.

And your petitioners represent that the said .....,  
while insolvent, and within four months next preceding the date of this peti-  
tion, ....., committed an act of bankruptcy in that he did  
heretofore, to wit:

[Here set forth act or acts specifically, giving facts bringing under Sec. 3-a.]

Wherefore, your petitioners pray that service of this petition with a subpoena  
may be made upon the said ....., as provided in the Acts of  
Congress relating to bankruptcy and that he may be adjudged a bankrupt  
within the purview of said Acts.

Dated ....., 19....

.....,  
.....,  
.....,

*Petitioners.*

.....  
*Attorneys for Petitioners,*  
*Office and Post Office address,*  
..... Street,  
.....

State of ..... } ss.:  
County of .....

..... and .....  
the petitioning creditors mentioned and described in the foregoing petition,  
do hereby severally, make solemn oath that the statements of facts contained  
in the foregoing petition subscribed by them are true.

.....,  
.....,  
.....,

Subscribed and sworn to before me, this ..... day of .....  
19....

NOTES.

**Involuntary Proceedings.**

References.

Bankruptcy Act, Sec. 1 (4) (10) (20) (22) (25), 2 (1), 3, 4, 5 (if against a  
partnership), 18, 59.

General Orders IV, V, VI, VII, IX, XI.

Equity Rules XX, XXV, XXVIII, XXX.

Should be filed in duplicate.

Official Form No. 3 has been held defective.

If petitioners are corporations, show where incorporated; if a partnership, set out  
firm name and add "a co-partnership composed of.... and .....etc."  
If the adjudication of a partnership is desired, modify prayer for relief to ask adjudica-  
tion of both the partnership and the individuals composing same.

**Filing.**

See, *Millan v. Exchange Bank of Mannington* (C. C. A. 4th Cir.), 24 Am. B. R. 889; 183 Fed. 753; 106 C. C. A. 327; certiorari denied in 219 U. S. 584; 55 L. Ed. 346.

In re *Stevenson*, 2 Am. B. R. 66; 94 Fed. 110.

In re *Dupree*, 8 Am. B. R. 321; 97 Fed. 28.

In re *Plymouth Cordage Co.* (C. C. A. 8th Cir.), 13 Am. B. R. 665; 135 Fed. 1000; 68 C. C. A. 434

**Power to adjudicate.—Residence and domicile distinguished:** "A domicile once acquired is presumed to continue until it is shown to have been changed. Where a change of domicile is alleged the burden of proving it rests upon the person making the allegation. To constitute the new domicile two things are indispensable: First, residence in the new locality; and, Second, the intention to remain there. The change cannot be made except *facto et animo*. Both are alike necessary. Either without the other is insufficient. Mere absence from a fixed home, however long continued, cannot work the change. There must be the animus to change the prior domicile for another. Until the new one is acquired the old one remains."

*Mitchell v. United States*, 21 Wall. 353.

In re *Davis* (D. C. N. J.), 33 Am. B. R. 16; 217 Fed. 113.

Partnership domicile.

In re *Mitchell et al.* (C. C. A. 2nd Cir.), 33 Am. B. R. 463; 219 Fed. 690; 135 C. C. A. 362.

In re *Williams*, 9 Am. B. R. 736; 120 Fed. 34.

In re *Williams*, 3 Am. B. R. 677; 99 Fed. 544.

In re *Berner*, 3 Am. B. R. 325.

In re *Grimes*, 2 Am. B. R. 160; 96 Fed. 529.

In re *Dinglehoeft*, 6 Am. B. R. 242; 109 Fed. 866.

In re *Filer*, 5 Am. B. R. 332; 108 Fed. 209.

In re *Scott*, 7 Am. B. R. 39; 111 Fed. 144.

In re *Clisdell*, 2 Am. B. R. 424; 101 Fed. 246.

In re *Blair*, 3 Am. B. R. 588; 99 Fed. 76.

In re *Garneau* (C. C. A. 7th Cir.), 11 Am. B. R. 679; 127 Fed. 677; 62 C. C. A. 403.

In re *Waxelbaum*, 3 Am. B. R. 267; 97 Fed. 562.

In re *Mathews Consol. Slate Co.* (D. C. Mass.), 16 Am. B. R. 350; 144 Fed. 724; *aff'd* (C. C. A. 1st Cir.), 16 Am. B. R. 407; 144 Fed. 737; 75 C. C. A. 603.

In re *Lemon* (D. C. O.), 30 Am. B. R. 638; 208 Fed. 80.

Absonder — Presumption of residence.

In re *Oldstein* (D. C. Ore.), 25 Am. B. R. 138; 182 Fed. 409.

Involuntary proceedings may be brought in the district where the alleged bankrupt has for the greater part of six months preceding the filing of the petition resided, although he may at the same time be without such district.

*Hills v. F. D. McKinness Co.* (D. C. O.), 26 Am. B. R. 329; 188 Fed. 1012.

**Who may be adjudged an involuntary bankrupt.**

In re *Yoder*, 11 Am. B. R. 445; 129 Fed. 894.

In re *Mackey*, 6 Am. B. R. 577; 110 Fed. 355.

In re *Drake*, 8 Am. B. R. 137; 114 Fed. 229.

*Wulburn v. Drake* (C. C. A. 4th Cir.), 9 Am. B. R. 695; 120 Fed. 493; 56 C. C. A. 64; *aff'g* 8 Am. B. R. 137; 114 Fed. 229.

In re *Thompson*, 4 Am. B. R. 340; 102 Fed. 287.

*Bank of Dearborn v. Matney*, 12 Am. B. R. 482; 132 Fed. 75.

*Couts v. Townsend*, 11 Am. B. R. 126; 126 Fed. 249.

*Rise v. Bordner*, 15 Am. B. R. 297; 140 Fed. 566.

Amendment of 1910 to § 4, not retroactive.



In re U. S. Restaurant & Realty Co. (C. C. A. 2nd Cir.), 25 Am. B. R. 915; 187 Fed. 118; 109 C. C. A. 36.

No jurisdiction to adjudicate a person bankrupt, who was insane at time alleged act of bankruptcy was committed.

In re Ward (D. C. N. J.), 28 Am. B. R. 29; 194 Fed. 174.

See In re Eisenberg (D. C. N. Y.), 8 Am. B. R. 551; 117 Fed. 786.

In re Funk (D. C. Ia.), 4 Am. B. R. 96; 101 Fed. 244.

In re Kehler (C. C. A. 2nd Cir.), 19 Am. B. R. 513; 159 Fed. 55; 86 C. C. A. 245; certiorari denied, 212 U. S. 573; 53 L. Ed. 656. (18 Am. B. R. 596; 153 Fed. 235 reversed).

Married woman when engaged in business on her own account or owes business obligations.

MacDonald v. Tefft-Weller Co. et al., 11 Am. B. R. 800; 128 Fed. 381; 63 C. C. A. 123. See, In re Remaley, 23 Am. B. R. 29.

#### Infant.

[See, notes, "Voluntary Petition"].

[See, "Collier on Bankruptcy" (10th ed.) p. 124].

Ratification of debts after becoming of age, whether same be founded in contract or tort, held sufficient to authorize adjudication.

In re Mandel (Ref. N. Y.), 33 Am. B. R. 42.

#### Farmers.

Statute should be construed ordinarily as having reference to the conditions existing at the time an alleged act of bankruptcy was committed.

In re Leland (D. C. Mich.), 25 Am. B. R. 209 and foot note; 185 Fed. 830.

In re Hoy (D. C. Ia.), 14 Am. B. R. 648; 137 Fed. 175.

In re Brown (D. C. Ia.), 13 Am. B. R. 140; 132 Fed. 706.

#### How question determined.

American Agricultural Chemical Co. v. Brinkley, 27 Am. B. R. 438; 194 Fed. 411; 114 C. C. A. 373.

In re Dwyer (C. C. A. 7th Cir.), 25 Am. B. R. 913; 184 Fed. 880; 107 C. C. A. 204.

In re Burgin (D. C. Ala.), 22 Am. B. R. 574; 173 Fed. 726.

In re Matson (D. C. Pa.), 10 Am. B. R. 473; 123 Fed. 743.

Farmer who conducts dairy may not be adjudged.

Gregg v. Mitchell (C. C. A. 6th Cir.), 21 Am. B. R. 659; 166 Fed. 725; 92 C. C. A. 415.

Nor though farmer makes a general assignment.

Olive v. Armour and Co. et al. (C. C. A. 5th Cir.), 21 Am. B. R. 901; 167 Fed. 517; 93 C. C. A. 153.

In re Johnson (D. C. N. Y.), 18 Am. B. R. 74; 149 Fed. 8.

In re Terry et al. (D. C. Pa.), 30 Am. B. R. 631; 208 Fed. 162.

Counts v. The Columbus Buggy Co. et al., 31 Am. B. R. 312; 210 Fed. 748; 127 C. C. A. 298.

Applies only to natural persons, not corporations.

In re Lake Jackson Sugar Co. (D. C. Tex.), 11 Am. B. R. 458; 129 Fed. 640.

Partnership engaged in farming has same rights as natural person.

H. D. Still's Sons v. American Nat. Bank, 31 Am. B. R. 320; 209 Fed. 749; 126 C. C. A. 473.

In re Duke & Son, 28 Am. B. R. 195.

**Wage-earner.**

A person giving music lessons at so much per hour not a wage-earner within meaning of the act.

First Nat. Bank of Wilkesbarre v. Barnum, 20 Am. B. R. 439; 160 Fed. 245.

Wage-earner — When not within meaning of act.

In re Wakefield (D. C. Cal.), 25 Am. B. R. 118; 182 Fed. 247.

Compare In re Pilger, 9 Am. B. R. 244; 118 Fed. 206.

Petition should contain allegation that person petitioned against is in neither of exempted classes. Failure to do so, unless raised, deemed waived.

Green River Deposit Bank v. Craig Bros., 6 Am. B. R. 381; 110 Fed. 137.

In re Columbia Real Estate Co., 4 Am. B. R. 411; 101 Fed. 965. In re Taylor (C. C. A. 7th Cir.), 4 Am. B. R. 515; 102 Fed. 728; 42 C. C. A. 1.

Rise v. Bordner, 15 Am. B. R. 297; 140 Fed. 566.

Edelstein v. United States (C. C. A. 8th Cir.), 17 Am. B. R. 649; 149 Fed. 636; 79 C. C. A. 328.

Conway v. German (C. C. A. 4th Cir.), 21 Am. B. R. 577; 166 Fed. 67; 91 C. C. A. 653.

Exempt person who has incurred debts in non-exempt occupation is not subject to adjudication upon debts incurred while in the exempt occupation.

In re Folkstad, 29 Am. B. R. 77; 199 Fed. 363.

Partnership as a private banker.

Burkhart v. German American Bank, 14 Am. B. R. 222; 137 Fed. 958.

**Unincorporated companies.**—A fire Lloyds association.

In re Seaboard Fire Underwriters, 13 Am. B. R. 722; 137 Fed. 987.

A joint stock association.

In re Hercules Atkin Co. Ltd., 13 Am. B. R. 369; 133 Fed. 813.

In re The Associated Trust, 34 Am. B. R. 851.

An ordinary building and loan association, not amenable to Act.

In the Matter of New York Building Loan Banking Co. (D. C. N. Y.), 11 Am. B. R. 51; 127 Fed. 471.

An incorporated club for social intercourse, not amenable to Act.

In re Fulton Club, 7 Am. B. R. 670; 113 Fed. 997.

**Who may be a petitioning creditor.**

In re Ryan, 7 Am. B. R. 562; 114 Fed. 373.

In re Brown, 7 Am. B. R. 102; 111 Fed. 979.

No power in court to compel creditors to become petitioners.

In re Gillette & Prentice, 5 Am. B. R. 119; 104 Fed. 769.

What is necessary in determining amount of claims of petitioning creditors.

In re Hughes (D. C. N. Y.), 25 Am. B. R. 556; 183 Fed. 872.

When bankrupt entitled to liquidation of claims of petitioners before answer.

In re Smith, 31 Am. B. R. 560; 209 Fed. 90.

[Ed. Note] —As to whether a petitioning creditor must have been a creditor at the time of the commission of the alleged act of bankruptcy, authorities are somewhat divided. The rule as stated, In re Hanyan, *infra*, seems to be the correct ruling.

In re Hanyan, 24 Am. B. R. 72; 180 Fed. 498; *aff'd*, 24 Am. B. R. 954; 181 Fed. 1021; 104 C. C. A. 667.

Compare In re Callison, 12 Am. B. R. 344; 130 Fed. 987; *aff'd*, sub nom., Brake v. Callison (C. C. A. 5th Cir.), 11 Am. B. R. 797; 129 Fed. 201; 63 C. C. A. 359.

In re Brinckmann (D. C. Ind.), 4 Am. B. R. 551; 103 Fed. 65.

Beers v. Hanlin, 3 Am. B. R. 745; 99 Fed. 695.

In re Stone (D. C. Pa.), 30 Am. B. R. 392; 206 Fed. 356.

See, as to assigned claim:

In re Lewis F. Perry & Whitney Co. (D. C. Mass.), 22 Am. B. R. 772; 172 Fed. 745.  
Creditor having provable claim; wife of alleged bankrupt.

In re Novak, 4 Am. B. R. 311; 101 Fed. 800.

Only one creditor. In re Penzansky, 8 Am. B. R. 99.

Stockholders. In re Rollins, etc., Co., 2 N. B. N. Rep. 988.

Relative. Perkins v. Dorman, 30 Am. B. R. 767; 206 Fed. 858.

A co-operative association extending credit in violation of statute held not to have a provable debt and not entitled to be a petitioning creditor.

In re Wyoming Valley Co-operative Association (D. C. Pa.), 28 Am. B. R. 462; 198 Fed. 436.

Unliquidated claim; authorities divided.

If provable and founded on contract.

In re F. L. Grant Shoe Co. (C. C. A. 2nd Cir.), 12 Am. B. R. 349; 130 Fed. 881; 66 C. C. A. 78; aff'g 11 Am. B. R. 48; 125 Fed. 576.

*Contra.* In re Big Meadows Gas Co. (D. C. Pa.), 7 Am. B. R. 697; 113 Fed. 974.  
In re Manhattan Ice Co. (D. C. N. Y.), 7 Am. B. R. 408; 114 Fed. 400; aff'd, sub nom., In re Stern (C. C. A. 2nd Cir.), 8 Am. B. R. 569; 116 Fed. 604; 54 C. C. A. 60. In re Brinckmann (D. C. Ind.), 4 Am. B. R. 551; 103 Fed. 65. In re Morales, 5 Am. B. R. 425; 105 Fed. 761.

But otherwise where claim has been reduced to judgment.

In re Putman, 27 Am. B. R. 923; 193 Fed. 464.

Splitting claims not allowed.

In re Independent Thread Co. 7 Am. B. R. 704; 113 Fed. 998. In re Tribelhorn (C. C. A. 2nd Cir.), 14 Am. B. R. 491; 137 Fed. 3; 69 C. C. A. 601. In re Halsey Electric Generator Co., 20 Am. B. R. 738; 163 Fed. 118. Stroheim v. Perry and Whitney Co. (C. C. A. 1st Cir.), 23 Am. B. R. 695; 175 Fed. 52; 99 C. C. A. 68; aff'g 22 Am. B. R. 772; 172 Fed. 745.

Dummy claimant to whom a claim has been assigned as a subterfuge and without consideration not qualified.

In re Pangborn, 26 Am. B. R. 40; 185 Fed. 673.

Endorser. In re Gerson, 5 Am. B. R. 89; 105 Fed. 891; aff'd (C. C. A. 3rd Cir.), 6 Am. B. R. 11; 107 Fed. 897; 47 C. C. A. 49.

In re Howell (C. C. A. 2nd Cir.), 32 Am. B. R. 572; 215 Fed. 1; 131 C. C. A. 309.  
Holder of note not yet due.

In re Rothenberg, 15 Am. B. R. 485; 140 Fed. 798.

Plaintiff in an action for damages.

In re Crafts-Riordon Shoe Co., 26 Am. B. R. 449; 185 Fed. 931.

**Secured creditors.**

To the extent of their provable claims in excess of the value of the securities held, but only to such extent.

Emerine v. Tarault (C. C. A. 6th Cir.), 34 Am. B. R. 55; 219 Fed. 68; 134 C. C. A. 606.

**Creditors who have secured voidable preference.**

In re Hornstein, 10 Am. B. R. 308; 122 Fed. 266.

In re Herzikopf, 9 Am. B. R. 90; 118 Fed. 101.

In re Norcross, 1 Am. B. R. 644.

In re Cain, 2 Am. B. R. 378.

In re Gillette, 5 Am. B. R. 119; 104 Fed. 769.

In re Fishblate Clothing Co., 11 Am. B. R. 204; 125 Fed. 986.

In re Vastbinder, 11 Am. B. R. 118; 126 Fed. 417.

Stevens v. Nave-McCord Mercantile Co. (C. C. A. 8th Cir.), 17 Am. B. R. 609; 150 Fed. 71; 80 C. C. A. 25.

In re Murphy (D. C. Mass.), 35 Am. B. R. 635; 225 Fed. 392.

**Creditors holding attachments.**

In re Burlington Malting Co. (D. C. Wis.), 6 Am. B. R. 369; 109 Fed. 777.

In re Schenkein (D. C. N. Y.), 113 Fed. 421, rev'g s. c. 7 Am. B. R. 162.

*Contra.* In re Hornstein (D. C. N. Y.), 10 Am. B. R. 308; 122 Fed. 266.

Purchaser of claim after filing of petition.

Emerine v. Tarault (C. C. A. 6th Cir.), (*supra*).

Trustee in bankruptcy of a petitioning creditor may be substituted.

Hays v. Wagner (C. C. A. 6th Cir.), 18 Am. B. R. 163; 150 Fed. 533; 80 C. C. A. 275.

Subcontractor may not be a petitioner.

In re Ellis (C. C. A. 6th Cir.), 16 Am. B. R. 221; 143 Fed. 103; 74 C. C. A. 297.

Tax collector under Massachusetts statute.

In re Corwin Mfg. Co., 26 Am. B. R. 269; 185 Fed. 976.

**Who may be estopped.**

Creditors inducing assignment.

Clark v. Henne and Mayer (C. C. A. 5th Cir.), 11 Am. B. R. 583; 127 Fed. 288; 62 C. C. A. 172.

One assenting to, or receiving benefit under, general assignment, may not be petitioning creditor.

Moulton v. Coburn (C. C. A. 1st Cir.), 12 Am. B. R. 553; 131 Fed. 201; 66 C. C. A. 90; aff'g In re Coburn, 11 Am. B. R. 212.

Durham Paper Co. v. Seaboard Knitting Mills, 10 Am. B. R. 29; 121 Fed. 179.

See, In re Curtis (C. C. A. 7th Cir.), 2 Am. B. R. 226; 94 Fed. 630; 36 C. C. A. 430.

Simonson v. Sinsheimer (C. C. A. 6th Cir.), 3 Am. B. R. 824; 100 Fed. 426; 40 C. C. A. 474. In re Commonwealth Lumber Co. (D. C. Wash.), 35 Am. B. R. 202; 223 Fed. 667.

In re Weedman Stave Co. (D. C. Ark.), 29 Am. B. R. 460; 199 Fed. 948.

In re Gold Run Mining and Tunnel Co. (D. C. Col.), 29 Am. B. R. 563; 200 Fed. 162.

Stroheim v. Perry and Whitney Co. (*supra*).

Corporation creditor may not be estopped because an officer of said corporation in his individual capacity acted as the assignee.

In re Winston, 10 Am. B. R. 171; 122 Fed. 187.

Creditor and officer of a corporation who has caused alleged act of bankruptcy may not.

In re Taylor House Association, 31 Am. B. R. 727; 209 Fed. 924.

Utz and Dunn Co. v. Regulator Co., 32 Am. B. R. 167; 213 Fed. 315.

Despres et al. v. Galbraith, 32 Am. B. R. 170; 213 Fed. 190.

**Right of petitioning creditor to withdraw.**

When creditor has used the machinery of the court and obtained a settlement of his claim he cannot withdraw from the proceeding.

In re Beddingfield, 2 Am. B. R. 355; 96 Fed. 190.

A creditor who has joined under a misunderstanding of fact may be permitted to withdraw as a petitioning creditor.

Moulton v. Coburn (*supra*).

**Frame of petition.**

May set forth several and distinct acts of bankruptcy.

Bradley Timber Co. v. White, 10 Am. B. R. 329; 121 Fed. 779; 58 C. C. A. 55; aff'g 9 Am. B. R. 441.

Nature of petitioner's claims.

In re White, 14 Am. B. R. 241; 135 Fed. 199.

Conway v. German (C. C. A. 4th Cir.), 21 Am. B. R. 577; 166 Fed. 67; 91 C. C. A. 653.



Agent's authority should be set forth.

In re Livingston, 13 Am. B. R. 357.

Petition should not be disjunctive in form as to statutory averments.

In re Laskaris (D. C. N. Y.), 1 Am. B. R. 480.

Petition should set forth facts, not legal conclusions, which should be alleged affirmatively and distinctly.

In re Plotke, 5 Am. B. R. 171; 104 Fed. 964; 44 C. C. A. 282.

**Sufficiency of.**—The caption no essential part.

In re Gorman, 15 Am. B. R. 587.

Petition must allege that debtor owes at least \$1,000 to confer jurisdiction.

Taft Co. v. Century Sav. Bank (C. C. A. 8th Cir.), 15 Am. B. R. 594; 141 Fed. 369;

72 C. C. A. 671.

Insufficient allegation of preference.

In re Pure Milk Co., 18 Am. B. R. 735; 154 Fed. 682.

In re Tupper (D. C. N. Y.), 20 Am. B. R. 824; 163 Fed. 766.

In re Flint Hill Stone and Construction Co., 18 Am. B. R. 81; 149 Fed. 1007.

General averments of acts of bankruptcy, insufficient.

In re Hallin, 28 Am. B. R. 708; 199 Fed. 806.

In re Sig. H. Rosenblatt & Co. (C. C. A. 2nd Cir.), 28 Am. B. R. 401; 193 Fed. 638;

113 C. C. A. 506.

In re Bellah, 8 Am. B. R. 310; 116 Fed. 69.

In re Deer Creek Water & Water Power Co., 29 Am. B. R. 356; 205 Fed. 205.

In re R. L. Radke Co., 27 Am. B. R. 950; 193 Fed. 735.

In re Truitt (D. C. Md.), 29 Am. B. R. 570; 203 Fed. 550.

In re Farthing, 29 Am. B. R. 732; 202 Fed. 557.

Allegations of acts of bankruptcy must be based on something more than rumor, hearsay or suspicion.

In re Blumberg, 13 Am. B. R. 343; 133 Fed. 845.

In re Mero, 12 Am. B. R. 171; 128 Fed. 630.

Essential to allege "insolvency at time of transfer."

In re Hammond (D. C. N. Y.), 20 Am. B. R. 776; 163 Fed. 548.

Where a petition shows upon its face and there is established upon the trial a sufficient petitioning creditor, the absence in the petition of a statement of the amount claimed by such petitioning creditor may be disregarded.

In re Pangborn, 26 Am. B. R. 40; 185 Fed. 673.

Sabin v. Blake-McFall Co. (C. C. A. 9th Cir.), 35 Am. B. R. 179; 223 Fed. 501; 139 C. C. A. 49.

Prayer for adjudication.

In re Wing Yick Co., 13 Am. B. R. 757.

Material allegations in petition held privileged as against libel charge.

Rosenberg v. Dworetzky (N. Y. Sup. Ct.), 24 Am. B. R. 583; 139 App. Div. (N. Y.) 517; 124 N. Y. Supp. 191.

**Verification of petition.**

In re Brumelkamp, 2 Am. B. R. 318; 95 Fed. 814.

In re Ball (D. C. N. Y.), 19 Am. B. R. 609; 156 Fed. 682.

By attorney.

In re Vastbinder, 11 Am. B. R. 118; 126 Fed. 417.

In re Hunt, 9 Am. B. R. 251; 118 Fed. 282.

In re Herzikopf, 9 Am. B. R. 90; 118 Fed. 101.

In re Livingston, 13 Am. B. R. 357. Rogers v. De Sota Placer Mining Co. (C. C. A. 9th Cir.), 14 Am. B. R. 252; 136 Fed. 407; 69 C. C. A. 251.

*In re Chequasset Lumber Co.*, 7 Am. B. R. 87; 112 Fed. 56.

"According to the best of knowledge, information and belief" held defective in North Carolina, but not jurisdictional, so may be amended.

*In re Farthing*, 29 Am. B. R. 732; 202 Fed. 557.

*Sabin v. Blake-McFall Co.* (C. C. A. 9th Cir.), 35 Am. B. R. 179; 223 Fed. 501; 139 C. C. A. 49.

Signing and verifying by attorney; requisites and practice.

*In re Miles Paint Mfg. Co.* (D. C. Pa.), 32 Am. B. R. 794.

May be verified in New York before commissioner of deeds.

*In re Morse*, 32 Am. B. R. 207; 210 Fed. 900.

**Defect not jurisdictional and answering on merits waives.**

*Leidigh Carriage Co. v. Stengel*, 2 Am. B. R. 383; 95 Fed. 637. *Simonson v. Sinsheimer* (C. C. A. 6th Cir.), 95 Fed. 948; 37 C. C. A. 337.

No abuse of discretion to allow amendment.

*Armstrong v. Fernandez* (U. S. Sup.), 19 Am. B. R. 746; 208 U. S. 324; 52 L. Ed. 514.

**Effect of filing petition.**—"Caveat to all the world."

*State Bank of Chicago v. Cox* (C. C. A. 7th Cir.), 16 Am. B. R. 32; 143 Fed. 91; 74 C. C. A. 285.

*In re Billing*, 17 Am. B. R. 80; 145 Fed. 395.

*In re Lutfy*, 19 Am. B. R. 614; 156 Fed. 873.

*Phenix Nat. Bank v. Waterbury* (N. Y. Sup. Ct.), 20 Am. B. R. 140; 123 App. Div. (N. Y.) 453; 108 N. Y. Supp. 391.

Bank not having actual notice of the filing of the petition not liable for checks paid out after the time of such filing.

*In re Zotti* (C. C. A. 2nd Cir.), 26 Am. B. R. 234; 186 Fed. 84; 108 C. C. A. 196; aff'g 23 Am. B. R. 812; 178 Fed. 304; certiorari denied. 223 U. S. 718; 56 L. Ed. 628.

### Acts of Bankruptcy.

#### Fraudulent transfers, Sec. 3-a (1).

Transfer of corporation's income to stockholder.

*In re R. L. Radke Co.* (D. C. Cal.), 27 Am. B. R. 950; 193 Fed. 735.

*In re Larkin*, 21 Am. B. R. 711; 168 Fed. 100.

General averments insufficient.

*In re Rosenblatt & Co.* (C. C. A. 2nd Cir.), 28 Am. B. R. 401; 193 Fed. 638; 113 C. C. A. 506.

*In re Brockton Ideal Shoe Co.* (C. C. A. 2d Cir.), 29 Am. B. R. 846; 202 Fed. 199; 120 C. C. A. 447.

*In re Condon* (C. C. A. 2nd Cir.), 31 Am. B. R. 754; 209 Fed. 800; 126 C. C. A. 524.

*In re White* (D. C. Pa.), 14 Am. B. R. 241; 135 Fed. 199.

#### Concealment of property. Sec. 3-a (1).

##### Sufficiency of petition.

*In re Glazier*, 28 Am. B. R. 391; 195 Fed. 1020.

*In re Shoesmith* (C. C. A. 7th Cir.), 13 Am. B. R. 645; 135 Fed. 684; 68 C. C. A. 322.

*In re Hark Bros.* (D. C. Pa.), 14 Am. B. R. 400.

When the evidence establishes the fact that a debtor has mortgaged his property with intent to hinder and delay his creditor the burden of proving his solvency rests upon him.

*Louisiana Nat. Life Ass. Soc. v. Segen* (D. C. La.), 28 Am. B. R. 407; 196 Fed. 903.

Transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors. Sec. 3-a (2).

In re Condon (C. C. A. 2nd Cir.), (*supra*).

Jones v. Aug. Wright Co. (C. C. A. 4th Cir.), 25 Am. B. R. 947; 184 Fed. 987; 106 C. C. A. 665.

Pollock v. Simon (D. C. Pa.), 30 Am. B. R. 390; 205 Fed. 1005.

In re Pangborn, 26 Am. B. R. 40; 185 Fed. 673.

Execution of a trust mortgage within four months held to constitute.

Rouse v. Ottenwess and Huxoll (C. C. A. 6th Cir.), 31 Am. B. R. 115; 208 Fed. 881; 126 C. C. A. 90.

See, In re Ottenwess, 27 Am. B. R. 579.

Payments in small amounts in the usual course of business are not deemed preferences.

In re Columbia Real Estate Co., 30 Am. B. R. 471 (and foot note); 205 Fed. 980.

A voluntary assignment of all the assets of a partnership by one partner though not participated in by other partners is an act of bankruptcy for which the firm may be adjudicated.

Youngbluth v. Slipper et al. (C. C. A. 9th Cir.), 26 Am. B. R. 265; 185 Fed. 773; 108 C. C. A. 106.

Insufficient allegations.

Conway v. German (C. C. A. 4th Cir.), 21 Am. B. R. 577; 166 Fed. 67; 91 C. C. A. 653.

In re Stone (D. C. Pa.), 30 Am. B. R. 392; 206 Fed. 356.

#### Intent.

Allegation of, necessary.

In re Hammond (D. C. N. Y.), 20 Am. B. R. 776; 163 Fed. 548.

In re Smith (D. C. N. Y.), 23 Am. B. R. 864; 176 Fed. 426.

Amount of the payment makes no difference if the requisite intent existed; but it does make a difference in determining whether or not the intent did exist.

In re Perlhefter & Shatz (D. C. N. Y.), 25 Am. B. R. 576; 177 Fed. 299.

Proof of unnecessary unless insolvency be shown at time of transfer.

In re Kassel (C. C. A. 2nd Cir.), 28 Am. B. R. 233; 195 Fed. 492; 115 C. C. A. 402.

Preference first brought out at a subsequent reference, when may not be used as an act of bankruptcy.

In re Perlhefter & Shatz (*supra*).

#### "Permitting preferences through legal proceedings." Sec. 3-a (3).

Failure to vacate a preference resulting from judgment levy and sale is an act of bankruptcy even though the judgment debtor is a corporation and defended in good faith, provided such corporation was insolvent five days before the day set for the sale.

In re Rung Furniture Co. (C. C. A. 2nd Cir.), 14 Am. B. R. 12; 139 Fed. 526; 71 C. C. A. 342; aff'g 10 Am. B. R. 44.

Computation of time for completion of such act of bankruptcy; when petition prematurely filed.

Pittsburgh Laundry Supply Co. v. Imperial Laundry Co. (C. C. A. 3rd Cir.), 18 Am. B. R. 756; 154 Fed. 662; 83 C. C. A. 486.

In re Nusbaum, 18 Am. B. R. 598; 152 Fed. 835.

In re Nat. Hotel and Cafe Co., 15 Am. B. R. 69; 138 Fed. 947.

Levy of an execution against a partnership. Failure to discharge levy constitutes an act of bankruptcy by all the members.

Holmes v. Baker and Hamilton (C. C. A. 9th Cir.), 20 Am. B. R. 252; 160 Fed. 922; 88 C. C. A. 104.

Sale under distress for rent may not constitute an act of bankruptcy.

Richmond, etc., Co. v. Allen (C. C. A. 4th Cir.), 17 Am. B. R. 583; 148 Fed. 657; 78 C. C. A. 389.

A creditor's petition which merely alleges that an attachment has been made upon property of the alleged bankrupt in a legal proceeding against him does not set forth an act of bankruptcy within the meaning of this section.

In re Vetterman (D. C. N. H.), 14 Am. B. R. 245; 135 Fed. 448.

"Final disposition," meaning of.

In re Tupper (D. C. N. Y.), 20 Am. B. R. 824; 163 Fed. 766.

In re Fineman (D. C. Pa.), 34 Am. B. R. 245; 223 Fed. 652.

In re Windt (D. C. Conn.), 24 Am. B. R. 536; 177 Fed. 584.

See, Citizens Banking Co. v. Ravenna Nat. Bank (U. S. Sup.), (*infra*).

Lien obtained beyond four months' period and enforced within said period.

Colston v. Austin Run Mining Co., 28 Am. B. R. 92; 194 Fed. 929; 114 C. C. A. 565.

"Legal proceedings."

Include attachment.

In re Putnam (D. C. Cal.), 27 Am. B. R. 923; 193 Fed. 464; *aff'd*, Folger v. Putnam, 28 Am. B. R. 173; 194 Fed. 793; 114 C. C. A. 513.

Confession of judgment.

In re Truitt, 29 Am. B. R. 570; 203 Fed. 550.

Failure to vacate invalid levy on mortgagor's equity of redemption under Missouri law.

In re Moark-Nemo Cons. Mining Co., 34 Am. B. R. 201; 219 Fed. 340.

Sufficiency of petition under clause (3) of Sec. 3-a; must allege the issuance of an execution upon the judgment or of the levying thereof upon any property of the judgment debtor and as to proposed sale.

An averment couched in the very general language of the statute presents no triable issue and is therefore insufficient.

In re Pressed Steel Wagon Goods Co. (D. C. Mich.), 27 Am. B. R. 44; 193 Fed. 811.

In re Vastbinder (D. C. Pa.), 11 Am. B. R. 118; 126 Fed. 417.

In re Rome Planing Mills (D. C. N. Y.), 3 Am. B. R. 123; 96 Fed. 812.

Seaboard Steel Casting Co. v. Wm. R. Trigg Co. (D. C. Va.), 10 Am. B. R. 594; 124 Fed. 75.

**Failure to vacate attachment.**

Law stated by the Supreme Court.

Citizens Banking Co. v. Ravenna Nat. Bank, 32 Am. B. R. 477; 234 U. S. 360; 58 L. Ed. 1352.

Rev'g and answering questions certified.

Ravenna Nat. Bank v. Curtiss, 30 Am. B. R. 818; 202 Fed. 892; 121 C. C. A. 250.

Sale on foreclosure subject to confessed judgment.

In re Fisher, 33 Am. B. R. 628; 219 Fed. 638.

**General assignment for benefit of creditors. Sec. 3-a (4).**

Construed in generic sense.

In re Tomlinson Co. et al. (C. C. A. 8th Cir.), 18 Am. B. R. 691; 154 Fed. 834; 83 C. C. A. 550.

Coupled with voluntary dissolution of a corporation, an act of bankruptcy.

In re Bennett Shoe Co. (D. C. Conn.), 15 Am. B. R. 497; 140 Fed. 687.

What constitutes a general assignment for benefit of creditors.

Courtenay Mercantile Co. v. Finch et al. (C. C. A. 8th Cir.), 27 Am. B. R. 688; 194 Fed. 368; 114 C. C. A. 328.

In re Courtenay Mercantile Co., 26 Am. B. R. 365; 186 Fed. 352.



See, *Griffen v. Dutton* (C. C. A. 1st Cir.), 21 Am. B. R. 449; 165 Fed. 626; 91 C. C. A. 614.

*Canner v. Webster-Tapper Co.*, 21 Am. B. R. 872; 168 Fed. 519; 93 C. C. A. 541.

*In re Heleker Bros. Mercantile Co.*, 33 Am. B. R. 503; 216 Fed. 963.

Conveyance in trust for benefit of creditors though without preferences an act of bankruptcy.

*In re Salmon and Salmon*, 16 Am. B. R. 122; 143 Fed. 395.

May be made without a formal deed of assignment.

*In re Bennett Shoe Co.* (*supra*).

An act of bankruptcy irrespective of fraudulent intent or solvency or insolvency.

*Gill v. Farmers' & Manufacturers' Bank*, 35 Am. B. R. 91; 176 S. W. 1111.

Essential allegations as to giving of mortgage.

*In re Flint Hill Stone and Construction Co.*, 18 Am. B. R. 81; 149 Fed. 1007.

When act charged is the making of a general assignment it is not necessary that insolvency be alleged or proved, nor is solvency a defense.

*In re Farthing*, 29 Am. B. R. 732 and foot note; 202 Fed. 557.

*In re Richardson* (D. C. Mass.), 27 Am. B. R. 590; 192 Fed. 50.

*Corbett v. Riddle*, 31 Am. B. R. 330; 209 Fed. 811; 126 C. C. A. 535.

*West Co. v. Lea Bros & Co.*, 2 Am. B. R. 463; 174 U. S. 590; 43 L. ed. 1098.

*Clark v. Henne and Meyer et al.* (C. C. A. 5th Cir.), 11 Am. B. R. 583; 127 Fed. 288; 62 C. C. A. 172.

*In re Broadway Savings Trust Co.* (C. C. A. 8th Cir.), 18 Am. B. R. 254; 152 Fed. 152; 81 C. C. A. 58.

*In re Tupper*, 20 Am. B. R. 824; 163 Fed. 766.

*In re Ball*, 19 Am. B. R. 609; 156 Fed. 682.

*Mills v. J. H. Fisher and Co.*, 20 Am. B. R. 237; 159 Fed. 897; 87 C. C. A. 77.

*Hartman v. John Peters and Co.*, 17 Am. B. R. 61; 146 Fed. 82.

Application for voluntary dissolution by a corporation in State court is not an act of bankruptcy.

*In re Empire Metallic Bedstead Co.* (C. C. A. 2nd Cir.), 3 Am. B. R. 575; 98 Fed. 981; 39 C. C. A. 372; aff'g, s. c. 2 Am. B. R. 329.

See, *In re Harper and Bros.*, 3 Am. B. R. 804; 100 Fed. 266.

Nor by a partnership.

*Boyd v. Boyd Fry Stove and China Co.*, 20 Am. B. R. 330.

*In re Federal Lumber Co.*, 26 Am. B. R. 438; 185 Fed. 926.

*In re Meyer* (C. C. A. 2nd Cir.), 3 Am. B. R. 559; 98 Fed. 976; 39 C. C. A. 368.

#### Appointment of receiver. Sec. 3-a (4).

Since amendment of 1903 a receivership is not an act of bankruptcy unless it was procured upon the application of the insolvent himself while insolvent and does not make the putting of a receiver in charge of the property of an insolvent an act of bankruptcy unless by reason of insolvency.

*In re Spalding* (C. C. A. 2nd Cir.), 14 Am. B. R. 129; 139 Fed. 244; 71 C. C. A. 370; rev'g s. c. 13 Am. B. R. 223.

See, *Blue Mountain Iron and Steel Co. v. Portner* (C. C. A. 4th Cir.), 12 Am. B. R. 559; 131 Fed. 57; 65 C. C. A. 295; certiorari denied in, 195 U. S. 636; 49 L. ed. 355.

Appointment under general equity powers of the court not an act of bankruptcy.

*Zugalla v. International Mercantile Agency* (C. C. A. 3rd Cir.), 16 Am. B. R. 67; 142 Fed. 927; 74 C. C. A. 97; rev'g, 13 Am. B. R. 725.

*In re Edward Ellsworth Co.*, 23 Am. B. R. 284; 173 Fed. 699.

What sufficient to bring within section.

*Hooks v. Aldridge* (C. C. A. 5th Cir.), 16 Am. B. R. 658; 145 Fed. 865; 76 C. C. A. 409.

In re Pickens Mfg. Co. (D. C. Ga.), 20 Am. B. R. 202; 158 Fed. 894.

In re Belfast Mesh Underwear Co. (D. C. Conn.), 18 Am. B. R. 620; 153 Fed. 224.

In re Douglass Coal and Coke Co., 12 Am. B. R. 539; 131 Fed. 769.

Beatty v. Anderson Coal Mine Co. (In re Beatty), (C. C. A. 1st Cir.), 17 Am. B. R. 738; 150 Fed. 293; 80 C. C. A. 181.

In re Kennedy Tailoring Co. (D. C. Tenn.), 23 Am. B. R. 656; 175 Fed. 871.

Hill, Receiver v. Western Electric Co. et al. (C. C. A. 6th Cir.), 32 Am. B. R. 332; 214 Fed. 243; 130 C. C. A. 613; aff'g, In re Rankin, 32 Am. B. R. 45; 210 Fed. 529.

In re Wenatchee Heights Orchard Co. (D. C. Wash.), 30 Am. B. R. 401; 204 Fed. 674.

In re Maplecroft Mills (C. C. A. 4th Cir.), 35 Am. B. R. 311; 226 Fed. 415; rev'g s. c. 33 Am. B. R. 815; 218 Fed. 659.

Fraudulently procuring appointment of receiver.

In re Muir, 31 Am. B. R. 528; 212 Fed. 495.

See, James Supply and Hardware Co. v. Dayton Coal and Iron Co. Ltd. (C. C. A. 6th Cir.), 34 Am. B. R. 649; 223 Fed. 991; 139 C. C. A. 367.

#### **Allegation of insolvency — when held insufficient.**

Butler & Co., Inc. v. Palmenberg (C. C. A. 1st Cir.), 30 Am. B. R. 502; 207 Fed. 705; 125 C. C. A. 223.

#### **When sufficient.**

Exploration Mercantile Co. v. Pacific Hardware & Steel Co. (C. C. A. 9th Cir.), 24 Am. B. R. 216; 177 Fed. 825; 101 C. C. A. 39.

Doyle-Kidd Dry Goods Co. v. Sadler-Lusk T. Co., 30 Am. B. R. 604; 206 Fed. 813.

In re Valentine Bohl Co. (C. C. A. 2nd Cir.), 34 Am. B. R. 855; 224 Fed. 685; 140 C. C. A. 225.

A petition which charges that a corporation while insolvent consented to the appointment of a receiver does not charge an act of bankruptcy since same is not tantamount to "applying for a receiver" under Sec. 3-a (4) of Act.

In re Gold Mining and Tunnel Co. (D. C. Col.), 29 Am. B. R. 563; 200 Fed. 162.

Appointment of receiver by State court not presumptively on the ground of insolvency.

Schumert & Warfield, Ltd. v. Security Brewing Co. (D. C. La.), 28 Am. B. R. 676; 199 Fed. 358.

#### **Evidence aliunde.**

In re Edward Ellsworth Co. (D. C. N. Y.), 23 Am. B. R. 284; 173 Fed. 699.

In re Muir (D. C. Pa.), (*supra*).

#### **Four months period. Sec. 3-b.**

The date of an amendment to a defective involuntary petition must be taken as the date from which the four months' period of Sec. 3-b is to be computed.

In re Condon (C. C. A. 2nd Cir.), 31 Am. B. R. 754; 209 Fed. 800; 126 C. C. A. 524; aff'g, s. c. 29 Am. B. R. 907.

In re Perlhefter and Shatz (D. C. N. Y.), 25 Am. B. R. 576; 177 Fed. 299.

What constitutes notorious, exclusive or continuous possession of property required by Sec. 3-b.

Jones v. Coates (C. C. A. 8th Cir.), 28 Am. B. R. 249; 196 Fed. 860; 116 C. C. A. 422.

In re Bogen, 13 Am. B. R. 529; 134 Fed. 1019.

In re Woodward, 2 Am. B. R. 233; 95 Fed. 260.

**FORM No. 8.**

**INVOLUNTARY PETITION AGAINST A CORPORATION.**

To the Honorable .....,  
 Judge of the District Court of the United States:  
 for the ..... District of .....

The petition of ..... of the City of ....., and  
 of ..... of the City of ..... and of .....  
 ....., of the City of ....., respectfully shows:

*First.* That ....., is a monied, business or commercial  
 corporation organized under and pursuant to the laws of the State of.....  
 ....., and is not a municipal, railroad, insurance or banking corporation  
 and is principally engaged in ..... and that it has for the  
 greater portion of the six months next preceding the date of the filing of this  
 petition had its principal place of business in the City of.....  
 State and District aforesaid, and owes debts to the amount of one thousand  
 dollars and upwards, and is insolvent, and is neither a wage-earner nor a  
 person engaged principally in farming or the tillage of the soil.

*Second.* That your petitioners are creditors of the said .....,  
 having provable claims against him amounting in the aggregate in excess  
 of securities held by them to the sum of five hundred dollars; that none of  
 your petitioners is entitled to priority of payment of his said claim within  
 the meaning of Section 64 (b) of the United States Bankruptcy Act and  
 amendments thereof, nor has any of your petitioners received a preference  
 within the meaning of Section 60 (a)-(b) of such law as amended.

*Third.* That the nature and amount of your petitioners' claims are as  
 follows:

.....: The claim of petitioner is for: .....

[Here set forth fully as to amount, consideration, etc.]

of which no part has been paid though duly demanded.

.....: The **claim** of petitioner is for:.....  
 of which no part thereof has been paid though duly demanded.

.....: The claim of petitioner is for:.....  
 of which no part thereof has been **paid** though duly demanded.

And your petitioners represent that the said .....,  
 while insolvent, and within four months next preceding the date of this peti-  
 tion, ....., committed an act of bankruptcy in that it did  
 heretofore, to wit:

[Here set forth act or acts specifically, giving facts bringing under Sec. 3-a.]

Wherefore, your petitioners pray that service of this petition with a subpoena may be made upon the said ....., as provided in the Acts of Congress relating to bankruptcy and that it may be adjudged a bankrupt within the purview of said Acts.

Dated, ....., 19....

.....,  
 .....  
 .....

*Petitioners.*

.....,  
*Attorney for Petitioners.*

*Office and Post Office Address,*

.....,  
 .....

[Verification as in Form No. 7.]

#### NOTES.

Allegation of nature of business in an involuntary petition is not jurisdictional and may be corrected by amendment.

In re Broadway Savings Trust Co. (C. C. A. 8th Cir.), 18 Am. B. R. 254; 152 Fed. 152; 81 C. C. A. 58.

**Principal place of business.**—In re Brice, 2 Am. B. R. 197; 93 Fed. 942.

Dressel v. North State Lumber Co., 5 Am. B. R. 744; 107 Fed. 255. In re Magid-Hope Silk Mfg Co., 6 Am. B. R. 610; 110 Fed. 352. In re Elmira Steel Co., 5 Am. B. R. 484; 109 Fed. 456. In re Marine Machine, etc., Co., 1 Am. B. R. 421; 91 Fed. 630. In re Plotke (C. C. A. 7th Cir.), 5 Am. B. R. 171; 104 Fed. 964; 44 C. C. A. 282. In re Mackey, 6 Am. B. R. 577; 110 Fed. 355. In re Duplex Radiator Co., 15 Am. B. R. 324; 142 Fed. 906. Tiffany v. LaPlume Condensed Milk Co., 15 Am. B. R. 413; 141 Fed. 444. In re Mathews Consolidated Slate Co. (C. C. A. 1st Cir.), 16 Am. B. R. 407; 144 Fed. 737; 75 C. C. A. 603; aff'g, 16 Am. B. R. 350; 144 Fed. 724. In re Munger Vehicle Tire Co., (C. C. A. 2nd Cir.), 19 Am. B. R. 785; 159 Fed. 901; 87 C. C. A. 81.

Home Powder Co. v. Geis, 29 Am. B. R. 580; 204 Fed. 568; 123 C. C. A. 94.

In re Tygarts River Coal Co., 30 Am. B. R. 183; 203 Fed. 178.

In re Tennessee Construction Co., 32 Am. B. R. 405; 213 Fed. 33; 129 C. C. A. 627; aff'g, 31 Am. B. R. 67; 207 Fed. 203.

In re Perry Aldrich Co. (D. C. Mass.), 21 Am. B. R. 244; 165 Fed. 249.

#### Articles of incorporation not controlling.

In re Beiermeister Bros. Co. (D. C. N. Y.), 31 Am. B. R. 474; 208 Fed. 945.

In re Wenatchee, etc., Orchard Co. (D. C. Wash.), 30 Am. B. R. 540; 205 Fed. 964.

#### A question of fact.

In re Pennsylvania Consol. Coal Co., 20 Am. B. R. 872; 163 Fed. 579.

In re E. and G. Theater Co., 35 Am. B. R. 255; 223 Fed. 657.

Filing of certificate does not make or constitute principal place of business.

In re Thomas McNally Co. (D. C. N. Y.), 31 Am. B. R. 382; 208 Fed. 291; revs'g, S. C. 29 Am. B. R. 772.

Six months period.—In re Ray, 2 Am. B. R. 158. (*Contra*) In re Stokes, 1 Am. B. R. 35. In re Plotke (*supra*). In re Harris, 11 Am. B. R. 649.



**FORM No. 9.**

**INVOLUNTARY PETITION BY ONE CREDITOR AGAINST A PARTNERSHIP.**

To the Honorable .....  
 Judge of the District Court of the United States,  
 for the ..... District of .....

The petition of ....., of ....., respectfully shows:

*First.* That ..... and ..... are and have been co-partners, doing business under the firm name and style of .....  
 ....., and have had their principal place of business at .....  
 State and district aforesaid, for the greater portion of the six months next preceding the date of filing of this petition; that the said partnership is insolvent and owes debts to the amount of one thousand dollars and upwards and is neither a wage-earner nor a person engaged principally in farming or the tillage of the soil.

*Second.* That upon information and belief, the said partnership.....  
 ..... has less than twelve creditors.

*Third.* That your petitioner is a creditor of said .....  
 and ..... composing the partnership firm of .....  
 having a provable claim against said partnership, amounting in the aggregate in excess of securities held by him to the sum of five hundred dollars; that your petitioner is not entitled to priority of payment of his said claim within the meaning of Section 64 (b) of the United States Bankruptcy Act and the amendments thereof, nor has he received a preference within the meaning of Section 60 (a-b) of such law as amended.

*Fourth.* That the nature and amount of your petitioner's claim is as follows:

.....  
 .....

No part of said claim has been paid though duly demanded.

*Fifth.* Your petitioner represents that the said ..... and .....  
 ....., composing the partnership firm of .....  
 while insolvent and within four months next preceding the date of this petition, committed an act of bankruptcy in that they did heretofore, to wit:

[Here specify act, giving facts, bringing under Section 3-a.]

Wherefore your petitioner prays that service of this petition with a subpoena may be made upon the said ..... and .....

individually and as co-partners doing business under the firm name and style of ....., as provided in the Acts of Congress relating to bankruptcy and that they as individuals and the firm of ..... may be adjudged bankrupt within the purview of said Acts.

Dated ....., 19...

.....,  
*Petitioner,*

.....,  
*Attorney for Petitioner,*

Office and Post Office Address,

..... Street,

.....

[Verification as in Form No. 7.]

#### NOTES.

Sec. 5h.

A partnership is a distinct entity and may be adjudged bankrupt irrespective of any adjudication against its individual members.

Mills v. J. H. Fisher Co. (C. C. A. 6th Cir.), 20 Am. B. R. 237; 159 Fed. 897, 87 C. A. 77.

In re Meyer et al (C. C. A. 2nd Cir.), 3 Am. B. R. 559; 98 Fed. 976, 39 C. C. A. 368.  
Right to administer.

See, Francis v. McNeal (U. S. Sup.) 30 Am. B. R. 244; 228 U. S. 695; 57 L. Ed. 1029; aff'g, s. c. (C. C. A. 3rd Cir.), 26 Am. B. R. 555; 186 Fed. 481, 485; 108 C. A. 459.

In re R. F. Duke and Son (D. C. Ga.), 29 Am. B. R. 93; 199 Fed. 199.

Abbott v. Anderson et al. (Ill. Sup. Ct.), 33 Am. B. R. 383.

In re Hansley & Adams, 228 Fed. 564.

One partner may be exempt as a farmer, yet firm be adjudicated.

In re Disney et al., 33 Am. B. R. 656; 219 Fed. 294.

Dickas v. Barnes (C. C. A. 6th Cir.), 15 Am. B. R. 566; 140 Fed. 849, 72 C. C. A. 261.

But a partnership is not bankrupt so long as any of its members is individually solvent.

Francis v. McNeal (*supra*).

In re Samuels and Lesser (C. C. A. 2nd Cir.), 32 Am. B. R. 436; 215 Fed. 845; 132 C. C. A. 187; rev'g, s. c. 30 Am. B. R. 293; 207 Fed. 195.

In re Perley and Hays, 15 Am. B. R. 54; 138 Fed. 927.

[See Notes to Form No. 5.]

Insanity of a partner and appointment of a committee will not prevent adjudication of partnership.

In re L. Stein and Co. (C. C. A. 7th Cir.), 11 Am. B. R. 536; 127 Fed. 547; 62 C. C. A. 272.

In what district proceeding may be brought.

In re Blair et al. (D. C. N. Y.), 3 Am. B. R. 588; 96 Fed. 76.

What petition should show.

In re Blair et al. (*supra*).

Non-adjudicated partner not required to file schedules.

In re City Contracting and Building Co. (D. C. Haw.), 30 Am. B. R. 133.

**Petition filed by one creditor.**—In re Blount, 16 Am. B. R. 97; 142 Fed. 263.

Hoffschlaeger Co. (Lim.) v. Young Nap., 12 Am. B. R. 515.

**How number of creditors computed.**

Moulton v. Coburn (C. C. A. 1st Cir.), 12 Am. B. R. 553; 131 Fed. 201; 66 C. C. A. 90; aff'g 11 Am. B. R. 212.

The averment that all the creditors of the alleged bankrupt are less than twelve in number does not limit the jurisdiction of the court.

In re Plymouth Cordage Co. (C. C. A. 8th Cir.), 13 Am. B. R. 665; 135 Fed. 1000; 68 C. C. A. 434.

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**FORM No. 10.**

[*Official.*]

**SUBPOENA TO ALLEGED BANKRUPT.**

United States of America, ..... District of .....  
To ....., in said District, Greeting:

For certain causes offered before the District Court of the United States of America within and for the ..... District of ....., as a court of bankruptcy, we command and strictly enjoin you, laying all other matters aside and notwithstanding any excuse, that you personally appear before our said District Court, to be holden at the United States Court House in said district, on the ..... day of ....., A. D. 19..., to answer to a petition filed by..... in our said court, praying that you may be adjudged a bankrupt; and to do further and receive that which our said District Court shall consider in this behalf. And this you are in no wise to omit, under the pains and penalties of what may befall thereon.

Witness, the Honorable ....., Judge of said Court,  
and the seal thereof, at the City of ....., this.....  
..... day of ....., A. D. 19...

.....  
*Clerk.*

{ Seal of  
the Court. }

---

**FORM No. 11.**

**MARSHAL'S RETURN.**

I hereby certify that on the ..... day of ....., 19...,  
at ....., in the City of ....., in my District,  
I personally served the within subpoena upon the within-named .....  
..... by exhibiting to..... the within original and at  
the same time leaving with ..... a copy thereof. I further

certify that at the same time and place I left with ..... a duplicate original of the creditor's petition for adjudication herein.

Dated ....., 19...

.....  
U. S. Marshal ..... Dist. ....

I hereby certify that after diligent search I am unable to find the within-named ..... in my District. I further certify that on the ..... day of ....., 19..., at .....  
....., in the City of ....., in my District, that being at the residence of said ..... I delivered to and left a copy of the within subpoena with an adult member of the family, to wit, ..... and at the same time and place left with ..... a duplicate original of the creditor's petition for ..... adjudication herein.

Dated ....., 19...

.....  
U. S. Marshal ..... Dist. ....

#### NOTES.

**Subpoena to alleged bankrupt.**— Issued by clerk. **General Order III.**

Returnable in fifteen days.

Counting time of return day.

In re Francis Levy Outfitting Co. (Lt'd.) (D. C. Haw.), 29 Am. B. R. 13.

Alias and successive subpoenas until service is had.

Gleason v. Smith, Perkins and Co., 16 Am. B. R. 602; 145 Fed. 895.

**Service.** Sec. 18a. **See Equity Rule XIII.** Sub. 8, Sec. 629 R. S.

May be made by leaving the papers in the district with an adult member of his family at his home.

In re Norton, 17 Am. B. R. 504; 148 Fed. 301.

Upon clerk of hotel where alleged bankrupt usually resided and of which he was the proprietor.

In re Risteen (D. C. Mass.), 10 Am. B. R. 494; 122 Fed. 732.

**Service upon Commissioner of Corporation of State.**

In re Magid-Hope Silk M'f'g Co., 6 Am. B. R. 610; 110 Fed. 352.

As to memorandum required by Equity Rule XII.

In re Wing Yick Co., 13 Am. B. R. 360.

Failure to make timely service does not terminate the proceeding.

Gleason v. Smith and Co. (C. C. A. 3d Cir.), 16 Am. B. R. 602; 145 Fed. 895; 76 C. C. A. 427.

In re Stein (C. C. A. 2d Cir.), 5 Am. B. R. 288; 105 Fed. 749; 45 C. C. A. 29.

In re Frischberg, 8 Am. B. R. 607.

Death of alleged bankrupt after filing of petition but before service of subpoena does not abate the proceeding. Shute et al. v. Patterson et al. (C. C. A. 8th Cir.), 17 Am. B. R. 99; 147 Fed. 509; 78 C. C. A. 75.

**Fees of U. S. Marshal for service.**

In re Damon et al., 5 Am. B. R. 133; 104 Fed. 775.

[For service outside the district see notes following Form No. 44.]



**FORM No. 12.**

**GENERAL APPEARANCE OF BANKRUPT OR CREDITOR.**

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Alleged Bankrupt.</i></p>	}	No. ....
---	---	----------

To the District Court of the United States,  
for the District of .....:

The clerk of this court will please enter my appearance as attorney for  
....., of ....., the alleged bankrupt  
[or a creditor of said alleged bankrupt], who desires to plead herein in re-  
sponse to the petition of ....., and .....  
that the said ..... be adjudicated bankrupt.

Dated ....., 19...

.....,  
*Attorney for*.....  
[Address].....

To.....  
and.....

**NOTES.**

This appearance must now be filed within five days after the return day. See Sec. 18-b, as amended, and see, General Order IV and Equity Rule VII.

Voluntary appearance by alleged bankrupt equivalent to personal service, but only so far as to confer jurisdiction of the person.

In re Mason, 3 Am. B. R. 599; 99 Fed. 256. Shutts v. Bank, 3 Am. B. R. 492; 98 Fed. 705.

**Authority of attorney to appear.**

In re Kindt, 3 Am. B. R. 546; 98 Fed. 867.

Cannot be questioned by answer of alleged bankrupt.

Gage Co. v. Bell, 10 Am. B. R. 696; 124 Fed. 371.

Adjudication should not be made before expiration of time limit.

Day v. Beck, etc., Co. (C. C. A. 5th Cir.), 8 Am. B. R. 175; 114 Fed. 834; 52 C. C. A. 468. In re Humbert, 4 Am. B. R. 76; 100 Fed. 439.

Comp. In re Columbia Real Estate Co., 4 Am. B. R. 411; 101 Fed. 965.

Even though alleged bankrupt voluntarily appeared and consented to adjudication.  
B-R Electric and Telephone Mfg. Co. v. Aetna Life Ins. Co. (C. C. A. 8th Cir.), 30  
Am. B. R. 424; 206 Fed. 885; 224 C. C. A. 545.

Effect of appearance of a preferred creditor or an attaching creditor.

In re Burlington Malting Co., 6 Am. B. R. 369; 109 Fed. 777. In re Rogers Milling  
Co., 4 Am. B. R. 540; 102 Fed. 687. In re Schenkein and ano., 7 Am. B. R. 162; rev'd,  
113 Fed. 421.

Extension of time to appear.

In re Simonson, 1 Am. B. R. 197; 92 Fed. 904.

In re Heinsfurter, 3 Am. B. R. 109; 97 Fed. 198.

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**FORM No. 13.**

**PETITION OF CREDITOR TO INTERVENE.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER	} No.....
OF	
..... <i>Bankrupt.</i>	

To the Honorable .....,  
Judge of the District Court of the United States,  
for the ..... District of .....:

The petition of ....., respectfully alleges and shows on infor-  
mation and belief:

1. That your petitioner, ....., is a creditor of the above  
named, ....., having a provable claim against the same  
amounting to \$...... in excess of securities held by him.

2. That the nature and amount of petitioner's claim is as follows:.....  
.....  
.....  
and that no part thereof has been paid though duly demanded.

3. That on the ..... day of..... 19..., .....,  
..... and ..... filed in the office of the clerk of

this court a petition praying that ..... be adjudged an involuntary bankrupt, which petition is still pending.

4. Your petitioner desires to join in the said petition as an intervening creditor therein.

5. (And your petitioner represents that the said ....., while insolvent, etc.) [Allege acts of bankruptcy, if desired, new or in modification of those alleged by original petitioners.]

Wherefore, your petitioner, intervening herein, would respectfully pray that he be allowed to join in the said petition of ....., ..... and ....., that the said ..... be adjudged a bankrupt within the purview of the Bankruptcy Act of 1898 and the amendments thereof.

.....,  
*Petitioner.*

[Verification.]

# FORM No. 14.

## ORDER ALLOWING INTERVENTION.

At a stated term of the District Court of  
 the United States, for the .....  
 ..... District of ....., held at  
 the United States Court House, City of  
 ....., on the ..... day  
 of ....., 19...

PRESENT:

Hon. ....,  
*District Judge.*

IN THE MATTER  
 OF

No.....

.....  
*Bankrupt.*

Upon reading and filing the annexed petition of .....  
 verified ....., 19..., praying that he be joined as a petitioning  
 creditor in the above entitled proceeding, and upon the petition in bankruptcy  
 and all proceedings heretofore had herein, and upon motion of .....  
 ....., attorney for said petitioner, it is

Ordered, that ..... be and he hereby is allowed to intervene herein, and is hereby joined and made a petitioning creditor, in the petition praying for the involuntary adjudication of ....., filed in the office of the clerk of the District Court of the United States, for the District of ....., on the ..... day of ....., 19...

.....,  
D. J.

#### NOTES.

**Petition and Order of Intervention.**—Sec. 59-f.

In re Haff (C. C. A. 2d Cir.), 13 Am. B. R. 362; 136 Fed. 78; 68 C. C. A. 646.

Whether creditors "join in the petition" or "file an answer" appearance should be entered. In re Taylor, 1 N. B. N. 412.

If application is granted the applicant becomes as much a petitioning creditor as if he had joined in original petition.

**Practice.**—By verified petition and usually granted *ex parte*.

**When intervention allowed.**

If issue is general, creditor should be allowed to join in, even when four months from act of bankruptcy has expired.

In re Stein, 5 Am. B. R. 288; 105 Fed. 749.

In re Mammoth Pine etc. Co., 6 Am. B. R. 84; 109 Fed. 308. In re Mackey, 6 Am. B. R. 577; 110 Fed. 355.

Creditors who intervene more than four months after the act of bankruptcy are entitled to proceed when the original petition was valid although the original petitioners have withdrawn since the intervention.

In re Bognesi and Co. (C. C. A. 2d Cir.), 34 Am. B. R. 692; 223 Fed. 771; 139 C. C. A. 351.

Comp. Despres v. Galbraith (C. C. A. 8th Cir.), 32 Am. B. R. 170; 213 Fed. 190; 129 C. C. A. 534.

Delay of a year unreasonable.

In re Jemison Mercantile Co., 7 Am. B. R. 588; 112 Fed. 966.

Not after a hearing and dismissal of original petition.

In re Tribelhorn (D. C. N. Y.), 14 Am. B. R. 491; 137 Fed. 3.

Immaterial to right of creditor to intervene that more than four months have elapsed since the commission of the alleged act of bankruptcy.

In re Charlestown Light & Power Co., 25 Am. B. R. 687; 183 Fed. 160.

**Intervention will not be ordered when petition is defective on its face.**

In re Beddingfield, 2 Am. B. R. 355; 96 Fed. 190.

**Who may intervene.**—Generally any creditor who could have filed the petition. Ayres v. Cone (C. C. A. 8th Cir.), 14 Am. B. R. 739; 138 Fed. 778; 71 C. C. A. 144.

In re Lewis F. Perry and Whitney Co. (C. C. A. 1st Cir.), 23 Am. B. R. 695; 175 Fed. 52; 99 C. C. A. 68; aff'g s. c. 22 Am. B. R. 772; 172 Fed. 745.

Assignee of a provable claim assigned after the filing of the petition may intervene in pending proceeding and have the same rights assignor had.

In re Fitzgerald, 26 Am. B. R. 773; 191 Fed. 95.



A deficiency in matter of form of the claim of an intervening creditor may be supplied upon the hearing. *Hays v. Wagner* (C. C. A. 6th Cir.), 18 Am. B. R. 163; 150 Fed. 533; 80 C. C. A. 275.

No intervention to oppose adjudication upon voluntary petition. [Motion to vacate proper remedy.]

In re Carleton, 8 Am. B. R. 270; 115 Fed. 246.

Intervening creditors may be counted in making up the number of creditors and amount of claims necessary to support the petition. In re Crenshaw, 19 Am. B. R. 502; 156 Fed. 638.

**Effect of appearance or intervention.**

Involuntary proceedings in absence of collusion may be dismissed upon default without notice except to creditors intervening or appearing in the proceeding.

In re Levi and Klauber (C. C. A. 2d Cir.), 15 Am. B. R. 294; 142 Fed. 962; 74 C. C. A. 932.

**Status of intervening creditor.**

In re Dandridge and Pugh (C. C. A. 7th Cir.), 31 Am. B. R. 15; 209 Fed. 838; 126 C. C. A. 562.

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**FORM No. 15.**

**ADMISSION OF BANKRUPTCY BY A CORPORATION.**

....., a Corporation organized and existing under the laws of the State of ....., pursuant to resolution of its Board of Directors duly adopted (or in States where required, "resolution of its Stockholders, etc.") hereby admits its inability to pay its debts and its willingness to be adjudged a bankrupt on that ground.

Dated ....., 19...

.....,

By .....

[Acknowledgment reciting authority to sign.]

**NOTES.**

**Sec. 3a (5)**

In re Mutual Mercantile Agency, 6 Am. B. R. 607; 111 Fed. 152. In re L. Humbert Co., 4 Am. B. R. 76; 100 Fed. 439.

In re Marine Machine and Conveyor Co., 1 Am. B. R. 421; 91 Fed. 630.

In re Kelly Dry Goods Co., 4 Am. B. R. 528; 102 Fed. 747.

*Contra*, In re Bates Machine Co. (D. C. Mass.), 1 Am. B. R. 129; 91 Fed. 625.

Admission may be made by a solvent corporation.

In re Russell Wheel and Foundry Co. (D. C. Mich), 35 Am. B. R. 66; 222 Fed. 569.

**Authority of Directors. Pro.**—*Cresson, etc., Coal and Coke Co. v. Stauffer* (C. C. A. 3d Cir.), 17 Am. B. R. 573; 148 Fed. 981; 78 C. C. A. 609, aff'g, s. c. 16 Am. B. R. 309.

In re Moench and Sons Co., 10 Am. B. R. 656; 123 Fed. 965 aff'd s. c. 12 Am. B. R. 240; 130 Fed. 685; 66 C. C. A. 37. Even when directors hold over.

In re Riley, Talbot and Hunt, 15 Am. B. R. 159.

In re Lisk Mfg Co. (D. C. N. Y.). 21 Am. B. R. 674; 167 Fed. 411.

In re American Guarantee and Security Co. (D. C. Cal.), 27 Am. B. R. 640; 192 Fed. 405.

Home Powder Co. v. Geis, 29 Am. B. R. 580; 204 Fed. 568; 123 C. C. A. 94.

In re Russell Wheel and Foundry Co. (D. C. Mich.), (*supra*).

**Contra**, In re Quartz Gold Mining Co. (D. C. Ore.), 19 Am. B. R. 667; 157 Fed. 243.

Aff'd Van Emon et al. v. Veal (C. C. A. 9th Cir.), 158 Fed. 1022; 85 C. C. A. 547.

In re Hudson River Electric Power Co., 23 Am. B. R. 191; 173 Fed. 934, aff'd 25 Am. B. R. 504; 183 Fed. 701; 106 C. C. A. 139.

In re Kersten, 6 Am. B. R. 516; 110 Fed. 929.

In re Rollins Gold and Silver Mining Co. (*obiter*), 4 Am. B. R. 327; 102 Fed. 982.

See Collier on Bankruptcy (10th Ed.), pp. 106-109; and Remington on Bankruptcy, Vol. 3, Secs. 44, 167.

Filing of a voluntary petition, not such an admission.

In re Ceballos and Co. (D. C. N. J.), 20 Am. B. R. 459; 161 Fed. 445.

#### **Must be an unqualified admission.**

In re Baker-Ricketson Co., 4 Am. B. R. 605; 97 Fed. 489.

In re Wilmington Hosiery Co., 9 Am. B. R. 579; 120 Fed. 179.

See, Brinkley v. Smithwick, 11 Am. B. R. 500; 126 Fed. 686.

Officer as individual, no authority.

In re Southern Steel Co. (D. C. Ala.), 22 Am. B. R. 476; 169 Fed. 702.

A treasurer cannot.

In re Burbank Co. (D. C. N. H.), 21 Am. B. R. 838; 168 Fed. 719.

Action of directors as individuals not sufficient. In re Gold Run Mining and Tunnel Co. (D. C. Col.), 29 Am. B. R. 563; 200 Fed. 162.

Debtor may request certain creditors to file petition.

In re Duplex Radiator Co., 15 Am. F. R. 324; 142 Fed. 906.

See, In re Independent Thread Co., 7 Am. B. R. 704; 113 Fed. 998.

When a corporation admits in writing its inability to pay its debts and its willingness to be adjudged bankrupt upon that ground an opposing creditor cannot raise the question of solvency.

In re Duplex Radiator Co. (*supra*).

In re C. Moench and Sons Co. (C. C. A. 2d Cir.), 12 Am. B. R. 240; 130 Fed. 685; 66 C. C. A. 37.

In re Thomas McNally Co. (D. C. N. Y.), 29 Am. B. R. 772; rev'd 31 Am. B. R. 382; 208 Fed. 291.

In re Northampton Portland Cement Co. (D. C. Pa.), 24 Am. B. R. 61; 179 Fed. 726.

The admission and the acknowledgment thereof must be in writing or it is not sufficient.

Conway et al. v. German et al. (C. C. A. 4th Cir.), 21 Am. B. R. 577; 166 Fed. 67; 91 C. C. A. 653.

**FORM No. 16.**

**MOTION TO DISMISS FOR DEFECTS APPEARING ON FACE OF PETITION.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p>IN THE MATTER</p> <p>OF</p> <p>The Petition of ....., .....</p> <p>and ..... that ..... be Ad- judged an Involuntary Bankrupt.</p>
---

Now comes ..... the respondent in the above entitled proceeding and moves that the petition filed herein on the ..... day of ..... 19..., by ....., ..... and ..... praying for his adjudication as an involuntary bankrupt be dismissed with costs upon the following grounds:

*First.* That it appears on the face of the said petition that the Court is without jurisdiction to grant the relief prayed for in said petition.

*Second.* That said petition does not state facts sufficient to warrant the granting of the relief prayed for therein, in that etc. (Here allege defects specifically.)

*Third.* (Set forth other grounds in paragraphs numbered consecutively.)  
Wherefore, he prays that said petition filed against him be dismissed with costs.

Dated .....,  
.....,  
*Attorney for.*  
.....,  
*Alleged Bankrupt.*

NOTES.

Demurrers abolished by Equity Rule XXIX held to apply to bankruptcy proceedings. Defense in point of law arising upon face of petition must now be made by motion to dismiss or taken in answer.

In re Jones (D. C. Tenn.), 31 Am. B. R. 693; 209 Fed. 717.

Waiver of objection to jurisdiction by pleading generally to the merits.

Clark-Herrin Campbell Co. v. H. B. Claflin Co. et al. (C. C. A. 5th Cir.), 33 Am. B. R. 414; 218 Fed. 429.

**FORM No. 17.****ORDER DENYING MOTION TO DISMISS AND NOTICE OF SETTLEMENT.**

At a Stated Term of the United States  
 District Court for the .....  
 District of ..... held at  
 the United States Court House, in the  
 City of ..... on the .....  
 day of ..... 19....

PRESENT:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

No.....

.....  
*Bankrupt.*

..... the alleged bankrupt herein having moved this  
 Court for an order dismissing the petition in bankruptcy filed herein by....  
 ....., and ....., on the .....  
 day of ..... 19..., for lack of jurisdiction and upon the  
 further ground that the same does not state facts sufficient to warrant the  
 granting of the relief prayed for in said petition and does not comply with the  
 equity rules of the Courts of the United States, and said motion having duly  
 come on to be heard before me on the ..... day of .....  
 19..., now upon reading and filing the notice of motion, dated the.....  
 day of ....., 19... and upon the petition in involuntary  
 bankruptcy herein and after hearing..... in support of said  
 motion and ..... in opposition thereto, and on motion of  
 ....., attorney for petitioners, it is

ORDERED, that the said motion be and the same hereby is denied, and the  
 said alleged bankrupt is directed to answer over.

.....,  
*U. S. D. J.*

SIR. Please take notice, that the within proposed Order will be presented  
 for settlement to Hon. ...., Judge of the United  
 States District Court, for the ..... District of .....



at the Court House on the ..... day of ....., 19...., at  
 ..... o'clock in the forenoon of that day or as soon thereafter as  
 counsel can be heard.

Dated .....

Yours, etc.,

.....

*Attorney for Petitioners,*

*Office and Post Office Address,*

.....

.....

To:

..... Esq.,

*Attorney for Alleged Bankrupt.*

**FORM No. 18.**

[Official.]

**DENIAL OF BANKRUPTCY.**

United States District Court,  
 for the ..... District of .....:  
 In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

At ....., in said District, on the ..... day of  
 ....., A. D. 19....

And now the said ..... appears, and denies that he has com-  
 mitted the act of bankruptcy set forth in said petition, or that he is insolvent,  
 and avers that he should not be declared bankrupt for any cause in said  
 petition alleged; and this he prays may be inquired of by the court, (or he  
 demands that the same may be inquired of by a jury).

.....

Subscribed and sworn to before me, this ..... day of .....,  
 A. D. 19....

**FORM No. 19.**

**GENERAL ANSWER OF ALLEGED BANKRUPT.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER	}	No.....
OF		
..... <i>Alleged Bankrupt.</i>		

Now comes ....., of ....., the person against whom a petition for adjudication in bankruptcy has been filed herein and does controvert such petition and file the following answer:

1. Denies that he is insolvent as alleged in said petition.

2. Denies that he has committed an act of bankruptcy as alleged in paragraph No. .... of the petition, but on the contrary, alleges the facts to be as follows:

.....  
.....  
.....

3. Denies that ....., ....., and ....., petitioning creditors herein, have provable claims against him which amount in the aggregate in excess of the value of securities held by them to \$....., but, on the contrary, alleges the facts to be as follows:

.....  
.....  
.....

Wherefore, ..... avers that he should not be adjudged bankrupt for any cause in said petition alleged, and prays a hearing thereon and that the petition herein be dismissed (with costs).

.....,  
*Alleged Bankrupt.*

.....,  
Attorney for Alleged Bankrupt.

[Verification.]

## NOTES.

**Sec. 18, 3. c.**

Defense of solvency. *Acme Food Co. v. Meier* (C. C. A. 6th Cir.), 18 Am. B. R. 550; 153 Fed. 74; 82 C. C. A. 208.

Answer should contain an express denial of insolvency when such an issue is made. *Cummins Grocer Co. v. Talley* (C. C. A. 6th Cir.), 26 Am. B. R. 484; 187 Fed. 507; 109 C. C. A. 273.

When immaterial.

In *re Sully* (C. C. A. 2d Cir.), 18 Am. B. R. 123; 152 Fed. 619; 81 C. C. A. 609. See *Lockman v. Lang*, 12 Am. B. R. 497; 132 Fed. 1; 65 C. C. A. 621. Objection to jurisdiction may be taken by answer as well as in motion to dismiss.

In *re Taylor*, 4 Am. B. R. 515, 102 Fed. 728.

When corporation admits inability to pay debts and willingness to be adjudged bankrupt, question of its insolvency is immaterial.

In *re Duplex Radiator Co.*, 15 Am. B. R. 324; 142 Fed. 906.

Reduction of amount of indebtedness by settlement with certain creditors after general assignment.

In *re Jacobson* (D. C. Mass.), 24 Am. B. R. 927; 181 Fed. 870.

Answer may contain any available defense or counterclaim.

In *re Paige*, 3 Am. B. R. 679; 99 Fed. 538.

*Hill v. Levy*, 3 Am. B. R. 374; 98 Fed. 94.

*Leidigh Carriage Co. v. Stengel*, 2 Am. B. R. 383; 95 Fed. 637. *Bray v. Cobb*, 1 Am. B. R. 153; 91 Fed. 102.

Insanity as a defense.

In *re Ward* (D. C. N. J.), 20 Am. B. R. 482; 161 Fed. 755.

Amendment of answer permitted.

In *re Harris*, 19 Am. B. R. 204; 155 Fed. 216.

If answer is prolix or defective, may be stricken out, or amendment allowed. *Bradley Timber Co. v. White*, 10 Am. B. R. 329; 121 Fed. 779; 58 C. C. A. 55; aff'g 9 Am. B. R. 441.

In *re Coe*, 1 Am. B. R. 504; 92 Fed. 333.

In *re Ogles*, 1 Am. B. R. 671; 93 Fed. 426.

Respondent entitled to file answer.

And not concluded by finding of State court which appointed a receiver upon the ground of insolvency.

In *re Pickens Mfg Co.*, 20 Am. B. R. 202; 158 Fed. 894.

Secured creditor holding claim in excess of value of security may file answer.

*Johansen Bros. Shoe Co. v. Alles* (C. C. A. 8th Cir.), 28 Am. B. R. 299; 197 Fed. 274; 116 C. C. A. 636.

Creditor holding attachment, the lien of which would be dissolved.

In *re C. Moench and Sons Co.*, 10 Am. B. R. 590; 123 Fed. 965.

Preferred creditor.

*Goldman and Co. v. Smith*, 1 Am. B. R. 266; 93 Fed. 182.

**Verification.**—Must be verified.

Attorney may verify for creditor when facts are within his knowledge or creditor is a non-resident.

Claim of, "Not real party in interest." *Strellow v. Schloss* (C. C. A. 3d Cir.), 19 Am. B. R. 359; 156 Fed. 662; 84 C. C. A. 374; rev'g, 149 Fed. 907.

Stockholders as such are not creditors of a corporation entitling them to file an answer.

In *re Eureka Anthracite Coal Co.*, 28 Am. B. R. 759; 197 Fed. 216.

A receiver appointed by a State court is competent to resist petition for adjudication.

In *re Gold Run Mining and Tunnel Co.*, 29 Am. B. R. 563; 200 Fed. 162.

In re Hudson River, etc., Co. (D. C. N. Y.), 23 Am. B. R. 191; 173 Fed. 934; aff'd, 25 Am. B. R. 504; 183 Fed. 701; 106 C. C. A. 139.

Blackstone v. Everybody's Store, 30 Am. B. R. 497; 207 Fed. 752; 125 C. C. A. 290.

#### Insolvency.

What constitutes.

Upson v. Mt. Morris Bank (N. Y. App. Div.), 14 Am. B. R. 6; 103 App. Div. (N. Y.) 367.

Voorhees v. Ungar et al., 165 App. Div. (N. Y.) 566.

In re Golden Malt Cream Co. (C. C. A. 7th Cir.), 21 Am. B. R. 36; 164 Fed. 326; 90 C. C. A. 258.

In re Wm. S. Butler and Co. (Butler v. Palmenberg) (C. C. A. 1st Cir.), 30 Am. B. R. 502; 207 Fed. 705; 125 C. C. A. 223.

"Suspicious circumstances."

Barr v. Sofranski, 130 App. Div. (N. Y.) 793.

Unpaid stock subscriptions are assets which must be considered.

In re Commonwealth Lumber Co. (D. C. Mass.), 35 Am. B. R. 202; 223 Fed. 667.

Liability as surety or indorser when principal is solvent is not such a liability as could be counted against a person on the question of solvency or insolvency.

In re Bowers, 33 Am. B. R. 51; 215 Fed. 617.

Property fraudulently conveyed, nor concealed assets considered in determining question of solvency.

In re R. F. Duke and Son, 28 Am. B. R. 195.

In re Wenatchee Heights Orchard Co. (D. C. Wash.), 30 Am. B. R. 401; 204 Fed. 674.

In re R. F. Duke and Son (*supra*).

No presumption from adjudication in bankruptcy that debtor was insolvent at the time the judgment was obtained.

McNeel v. Folk (W. Va. Sup. Ct. of App.), 33 Am. B. R. 234.

### FORM No. 20.

#### ANSWER ALLEGING MORE THAN TWELVE CREDITORS.

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER	}	No.....
OF		
..... <i>Bankrupt.</i>		

Now comes ..... of ....., the person against whom a petition for an adjudication in bankruptcy has been filed herein, (or





In re Haff (C. C. A. 2d Cir.), 13 Am. B. R. 362; 136 Fed. 78; 68 C. C. A. 646.  
List under oath should be filed with answer.

In re Haff (*supra*).

What statement should be included in "list of creditors."

W. A. Gage and Co. v. Bell, 10 Am. B. R. 696; 124 Fed. 371.

An intervening creditor who became such by assignment after petition filed not to be counted in computing requisite number.

Stroheim v. Perry and Whitney Co. (C. C. A. 1st Cir.), 23 Am. B. R. 695; 175 Fed. 52; 99 C. C. A. 68; aff'g 22 Am. B. R. 772; 172 Fed. 745.

**When not res adjudicata.**

In re Letson (C. C. A. 8th Cir.), 19 Am. B. R. 506; 157 Fed. 78; 84 C. C. A. 582.

Hussey v. Richardson-Roberts Dry Goods Co. (C. C. A. 8th Cir.), 17 Am. B. R. 511; 148 Fed. 598; 78 C. C. A. 370.

## FORM No. 21.

### ANSWER OF CREDITOR.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER  OF  .....  <i>Alleged Bankrupt.</i>	}	No. ....
--	---	----------

Now comes ....., of ....., a creditor of the above named alleged bankrupt, for answer to the petition of .....  
....., praying that ..... be adjudicated a bankrupt, respectfully shows:

1. That said creditor, ..... Company, is a corporation duly organized under and by virtue of the laws of the State of ....., and is a creditor of said ....., having a provable claim in the sum of \$....., all of which is unsecured.

2. Upon information and belief, said creditor denies the allegation of the petition that said alleged bankrupt is insolvent, but alleges that said alleged bankrupt is solvent and has assets in excess of liabilities, enabling him to pay all his debts in full.

3. Upon information and belief, denies the allegation that the petitioner, ....., is a creditor of said alleged bankrupt or that he has

a provable claim against said alleged bankrupt, which amounts in the aggregate in excess of the value of securities held by him to five hundred dollars (\$500) and over, and denies that said petitioner is a creditor of said alleged bankrupt in any sum, and alleges that said petitioner, ....., is indebted to said alleged bankrupt in the sum of ..... dollars (\$....) over and above all counter claims.

4. Denies any knowledge or information sufficient to form a belief as to the allegations of the petition that said alleged bankrupt has less than twelve creditors.

5. Denies that said bankrupt has committed an act of bankruptcy as alleged in the petition, or that said ..... should be declared bankrupt for any cause.

Wherefore, he prays a hearing thereon, and that the petition be dismissed with costs.

.....,  
*Attorney for Creditor,*  
 .....  
 ..... Street,  
 .....

[Verification.]

**FORM No. 22.**

**DEMAND FOR JURY TRIAL.**

United States District Court,  
 for the ..... District of .....:  
 In Bankruptcy.

IN THE MATTER	}	No.....
OF		
..... <i>Alleged Bankrupt.</i>		

I, ....., of ....., in said district, the alleged bankrupt, who has this day filed an answer to the petition filed on the ..... day of ....., 19...., by .....,

..... and ....., praying for an adjudication in involuntary bankruptcy, do hereby apply for and demand a trial by jury in respect to those matters concerning which I am entitled thereto by the provisions of Section 19-a of the Bankruptcy Act.

Dated ....., 19....

.....,

*Alleged Bankrupt.*

#### NOTES.

**Right absolute to bankrupt as to questions specified. Sections 18 and 19.**

*Elliott v. Toeppner*, 9 Am. B. R. 50; 187 U. S. 327; 47 L. Ed. 200.

*Day v. Beck and Gregg Hardware Co.*, 8 Am. B. R. 175; 114 Fed. 834; 52 C. C. A. 468.

Right denied in partnership petition upon answer denying membership in firm by individual.

*In re Fook Woh & Co.*, 36 Am. B. R. 419.

Creditors cannot demand a jury trial.

*In re Herzikopf*, 9 Am. B. R. 145; 121 Fed. 544.

Bankrupt must apply for within time limited in Act.

*In re Neasmith*, 17 Am. B. R. 128; 147 Fed. 160; 77 C. C. A. 402.

When act charged is a transfer of property with intent to prefer and the answer admits respondent's insolvency and act charged, but merely denies the intent this does not raise an issue entitling him to a jury trial.

*In re Harris*, 19 Am. B. R. 204; 155 Fed. 216.

The proceedings on a jury trial held under this provision of the Act are the same in form as on the trial of an ordinary action at law in a Federal court and if error is committed, it can only be reviewed on an application for a new trial or on a writ of error and not by appeal.

*In re Ward*, 20 Am. B. R. 482; 161 Fed. 755.

*Moss v. Franklin Coal Co.*, 11 Am. B. R. 423; 125 Fed. 998; *aff'd* *In re Neasmith*, 17 Am. B. R. 128; 147 Fed. 160; 77 C. C. A. 402.



**FORM No. 23.**

[*Official.*]

**ORDER FOR JURY TRIAL.**

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER
OF
.....

At ....., in said District, on the ..... day of  
....., 19....

Upon the demand in writing filed by ....., alleged to be  
a bankrupt, that the fact of the commission by him of an act of bankruptcy,  
and the fact of his insolvency may be inquired of by a jury, it is ordered, that  
said issue be submitted to a jury.

.....,  
*Clerk.*

Seal of  
the Court.

**NOTES.**

This order not used in many jurisdictions, including Southern district of New York.

**FORM No. 24.****NOTICE OF TRIAL IN INVOLUNTARY PROCEEDING.**

United States District Court,  
 for the ..... District of .....:  
 In Bankruptcy.

IN THE MATTER  OF  .....  <i>Alleged Bankrupt.</i>	}	No.....
--	---	---------

Please take notice that the issues raised by the petition and answer filed herein, will be brought on for a trial and a motion will be made for judgment as prayed for in the petition, [or to dismiss the petition herein], at a term of this court, to be held in and for the ..... District ....., at the court room, in the United States Court House, in the City of....., on the ..... day of ....., 19...., at..... o'clock in the .....noon of that day, or as soon thereafter as counsel can be heard, and for the costs of this proceeding.

Dated, ....., ....., 19....

Yours, etc.

.....,  
*Attorneys for Petitioners.*

[or alleged Bankrupt.]

.....Street,

To

Messrs .....

*Attorneys for* .....

.....

**FORM No. 25.**

**ORDER EXTENDING TIME TO ANSWER.**

At a stated term of the District Court  
of the United States for the .....  
District of ....., held at the  
Court House, City of ....., on  
the ..... day of ....., 19..

PRESENT:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

.....  
*Alleged Bankrupt.*

Upon the notice of appearance herein of ....., an opposing  
creditor, on all the proceedings heretofore had herein, and on motion of  
....., attorneys for ....., it is hereby

Ordered that the time of ..... to plead to the petition  
of ..... to have ..... adjudged an invol-  
untary bankrupt, be, and it hereby is extended to and including .....,  
19....

.....,  
*District Judge.*

**FORM No. 26.****CONSENT TO WITHDRAW ANSWER AND FOR ADJUDICATION.**

United States District Court,

for the ..... District of .....:

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

I hereby withdraw the answer heretofore filed by me on the..... day of ....., 19..., in the above entitled proceeding on behalf of ....., bankrupt, (or creditor,) and consent that an order of adjudication in bankruptcy be entered herein without further notice.

Dated ....., ....., 19...

.....,

*Attorney for* .....**NOTES.**

Debtor may withdraw opposition to petition at any time without notice to his creditors.

In re Billing, 17 Am. B. R. 80; 145 Fed. 395.



FORM No. 27.

ORDER OF ADJUDICATION AND REFERENCE.

In the District Court of the United States,  
for the ..... District of .....

IN THE MATTER  
OF  
.....  
*Bankrupt.*

} In Bankruptcy No. ....

At ....., in said District, on the ..... day of  
....., A. D. 19..., before the Honorable .....,  
Judge of the said Court in Bankruptcy, the petition of .....  
.....  
that he be adjudged bankrupt, within the true intent and meaning of the  
Acts of Congress relating to bankruptcy, having been heard and duly con-  
sidered, the said .....

.....  
hereby declared and adjudged bankrupt accordingly.

\*And it is further ordered that the said matter be referred to.....  
.....  
one of the referees in bankruptcy of this Court, to take all such further pro-  
ceedings therein as are required by said Acts of Congress, and all such acts  
therein as the Court might take or perform, except such as by law or the gen-  
eral orders of the Supreme Court are required to be performed by the Judge;  
and that the said bankrupt shall attend before said referee on the .....  
day of ....., 19..., at ..... o'clock ... M., and thenceforth  
shall submit to such orders as may be made by said referee or by the Court  
relating to ..... said bankruptcy.

Witness, the Honorable ....., Judge of the said Court,  
and the seal thereof, at the City of ....., in said District, on the  
..... day of ....., A. D. 19....

.....,  
*District Judge.*

.....,  
*Clerk.*

## NOTES.

**Adjudication. Sec. 18-e, f and g.**

In involuntary cases, when proper service has been made upon alleged bankrupt and there is no appearance by him or any of his creditors, court must either adjudicate or dismiss the proceeding.

In re Billing, 17 Am. B. R. 80; 145 Fed. 395.

Practice in the Seventh Circuit.

In re King, 24 Am. B. R. 606; 179 Fed. 694; 103 C. C. A. 240.

Adjudication within less than five days voidable by creditors.

B-R Electric and Telephone, etc., Co. v. Aetna Life Insurance Co. (C. C. A. 8th Cir.), 30 Am. B. R. 424; 206 Fed. 885; 124 C. C. A. 545.

Death of alleged bankrupt after the filing of an involuntary petition but prior to service does not abate the proceeding.

Shute v. Patterson (C. C. A. 8th Cir.), 17 Am. B. R. 99; 147 Fed. 509; 78 C. C. A. 75.

Adjudication of partnership after death of partner.

In re Coe, 19 Am. B. R. 618; 157 Fed. 308.

Jurisdiction to adjudicate a partnership organized less than six months.

In re Mitchell and Co., 31 Am. B. R. 814; 211 Fed. 778; aff'd, 33 Am. B. R. 463; 219 Fed. 690; 135 C. C. A. 362.

Practice as to direction of verdict on trial of issues of insolvency.

In re Iron Clad M'fg Co. (C. C. A. 2d Cir.), 28 Am. B. R. 628; 197 Fed. 280; 116 C. C. A. 642.

Subsequent insanity does not abate proceeding.

In re Kehler (C. C. A. 2d Cir.), 19 Am. B. R. 513; 159 Fed. 55; 86 C. C. A. 245.

Court should act promptly and adjudicate when no answer is filed.

Acme Harvester Co. v. Beekman Lumber Co. (U. S. Sup.), 27 Am. B. R. 262; 222 U. S. 300; 56 L. Ed. 208.

When judge is absent from district, clerk must, "forthwith refer the case to the referee."

In re Polakoff, 1 Am. B. R. 358.

Judge in absence of personal objection may refer a proceeding to any referee within the district to subserve the convenience of parties.

In re Western Investment Co., 21 Am. B. R. 367; 170 Fed. 677.

But not to a referee in another district.

In re Schenectady Eng. and Cons. Co. (D. C. N. Y.), 17 Am. B. R. 279; 147 Fed. 868.

No presumption arises from adjudication of insolvency at time of prior preference obtained.

McNeel v. Folk (W. Va. Sup. Ct. of App.), 33 Am. B. R. 234.

Effect of an adjudication.

Neustadter et al. v. The Chicago Dry Goods Co., 3 Am. B. R. 96; 96 Fed. 830.

In re Billing (*supra*).

In re Am. Brewing Co., 7 Am. B. R. 471; 112 Fed. 752.

Watson v. Merrill (C. C. A. 8th Cir.), 14 Am. B. R. 453; 136 Fed. 359; 69 C. C. A. 185.

On State statute.

Continental B. and L. Assn. v. Superior Court, 28 Am. B. R. 873.

In re McCrum (C. C. A. 2d Cir.), 32 Am. B. R. 604; 214 Fed. 207; 130 C. C. A. 555.

As determining insolvency.

Lazarus v. Eagen, 30 Am. B. R. 287; 206 Fed. 518; decree modified, 209 Fed. 1004; 126 C. C. A. 665.

The issue as to whether a corporation is amenable to the Act is not jurisdictional and is concluded by the adjudication.

In re First Nat. Bank of Belle Fourche (C. C. A. 8th Cir.), 18 Am. B. R. 266; 152 Fed. 64; 81 C. C. A. 260.

Confers jurisdiction complete and exclusive both *in rem* and *in personam*.

Carter v. Hobbs, 1 Am. B. R. 215; 92 Fed. 594.

Manson v. Williams (C. C. A. 1st Cir.), 18 Am. B. R. 674; 153 Fed. 525; 82 C. C. A. 475; aff'g s. c. 17 Am. B. R. 826.

In re First Nat. Bank of Belle Fourche (C. C. A. 8th Cir.), 18 Am. B. R. 266; 152 Fed. 64; 81 C. C. A. 260.

Effect of on statute of limitations.

Cannon v. Prude (Ala. Sup. Ct.), 30 Am. B. R. 276.

Bankrupt not to be regarded as civilly dead from adjudication to appointment of trustee.

Plaut v. Gorham Mfg Co. (D. C. N. Y.), 23 Am. B. R. 42; 174 Fed. 852.

Bankruptcy Court may adjudicate a corporation even though its property is in possession of receivers appointed in a State court.

In re C. Moench and Sons (C. C. A. 2d Cir.), 12 Am. B. R. 240; 130 Fed. 685; 66 C. C. A. 37.

Corporation not dissolved by adjudication.

Nat. Surety Co. v. Medlock, 19 Am. B. R. 654; 2 Ga. App. 665.

Proceedings under State Act for the sale of the assets of an insolvent corporation under writ of *fiery facias* does not work a dissolution of the corporation so as to defeat the jurisdiction of a court of bankruptcy to adjudge it a bankrupt.

Cresson and Clearfield Coal and Coke Co. v. Stauffer (C. C. A. 3d Cir.), 17 Am. B. R. 573; 148 Fed. 981; 78 C. C. A. 609.

If an adjudication is supported by a sufficient allegation and proof of an act of bankruptcy, it cannot be set aside on appeal because other acts alleged were neither properly pleaded nor sufficiently proved.

In re Lynan (C. C. A. 2d Cir.), 11 Am. B. R. 466; 127 Fed. 123; 62 C. C. A. 123.

Adjudication cannot be attacked for first time on discharge by a creditor who had proceeded thus far under it.

In re Polakoff (*supra*).

In re Mason, 3 Am. B. R. 599 (and foot note); 99 Fed. 256.

Duty of trustee to file copy of adjudication in counties where bankrupt holds real estate under Sec. 47-c. Statute merely directory and failure to do so does not affect title.

Hull v. Burr, 26 Am. B. R. 897.

#### **No collateral attack.**

Edelstein v. United States (C. C. A. 8th Cir.), 17 Am. B. R. 649; 149 Fed. 636; 79 C. C. A. 328.

Huttig Mfg. Co. v. Edwards (C. C. A. 8th Cir.), 20 Am. B. R. 349; 160 Fed. 619; 87 C. C. A. 521.

Dempster v. Waters-Pierce Oil Co. (In re Dempster) (C. C. A. 8th Cir.), 22 Am. B. R. 751; 172 Fed. 353; 97 C. C. A. 51.

In re Walrath, 24 Am. B. R. 541; 175 Fed. 243.

Sabin v. Larkin-Green Logging Co. (D. C. Ore.), 34 Am. B. R. 210; 218 Fed. 984; aff'd, 35 Am. B. R. 86; 222 Fed. 814.

#### **Effect of individual adjudication on firm liabilities.**

In re Meyers, 3 Am. B. R. 260; 97 Fed. 753.

In re Morrison, 11 Am. B. R. 498; 127 Fed. 186.

Compare In re Feigenbaum, 7 Am. B. R. 339.

In re Laughlin, 3 Am. B. R. 1; 96 Fed. 589.

Jarecki Mfg. Co. v. McElwaine, 5 Am. B. R. 751.

In re Kaufman, 14 Am. B. R. 393; 136 Fed. 262.

Loomis v. Wallblom, 13 Am. B. R. 687; 94 Minn. 392.

American Steel and Wire Co. v. Coover, 25 Am. B. R. 58.

See, In re McFaun, 3 Am. B. R. 66; 96 Fed. 592; where there was no notice to firm creditors.

Effect of not giving notice to non-joining partner.

In re City Contracting and Building Co. (D. C. Haw.), 29 Am. B. R. 171.

If adjudication is of the partnership firm only, the discharge following is only of firm debts.

In re Hale, 6 Am. B. R. 35; 107 Fed. 432.

Dodge v. Kaufman, 15 Am. B. R. 542; 46 Misc. (N. Y.) 248.

See, In re Bertenshaw (C. C. A. 8th Cir.), 19 Am. B. R. 577; 157 Fed. 363; 85

C. C. A. 61.

In re McMurtrey and Smith, 15 Am. B. R. 427; 142 Fed. 853.

#### When not res adjudicata.

In re Letson (C. C. A. 8th Cir.), 19 Am. B. R. 506; 157 Fed. 78; 84 C. C. A. 582.

Hussey v. Richardson-Roberts Dry Goods Co. (C. C. A. 8th Cir.), 17 Am. B. R. 511; 148 Fed. 598; 78 C. C. A. 370.

If the petition charges different acts of bankruptcy, and the adjudication does not reveal upon which one of them it proceeded, it does not render any particular charge *res adjudicata* (*dictum*). In re Julius Bros. (C. C. A. 2d Cir.), 32 Am. B. R. 699, 217 Fed. 3; 133 C. C. A. 328.

As to petitioner creditor's claim.

In re Harper (D. C. N. Y.), 23 Am. B. R. 918; 175 Fed. 412.

### FORM No. 28.

#### ORDER OF REFERENCE IN JUDGE'S ABSENCE.

[Official.]

In the District Court of the United States,  
for the ..... District of .....,

IN THE MATTER  OF  .....  <i>Bankrupt.</i>	}	In Bankruptcy No. ....
--	---	------------------------

Whereas, on the ..... day of ....., A. D. 19 .., a petition was filed to have ....., of ....., in the county of ....., and district aforesaid, adjudged a bankrupt



according to the provisions of the Acts of Congress relating to bankruptcy; and whereas, the judge of said court was absent from said district at the time of filing said petition (*or, in case of involuntary bankruptcy, on the next day after the last day on which pleadings might have been filed, and none have been filed by the bankrupt or any of his creditors*), it is thereupon ordered that the said matter be referred to ....., one of the referees in bankruptcy of this court, to consider said petition and take such proceedings therein as are required by said acts; and that the said ..... shall attend before said referee on the ..... day of ..... A. D. 19...., at .....

Witness my hand and the seal of the said court, at....., in said district, on the ..... day of ....., A. D. 19....

Clerk.

{ Seal of  
the Court. }

NOTES.

Under hand of clerk and seal of court.

In re L. Humbert Co., 4 Am. B. R. 76; 100 Fed. 439.

In re Murray, 3 Am. B. R. 601; 96 Fed. 600.

Authority may be exercised by deputy clerk.

Gilbertson v. U. S. (C. C. A. 7th Cir.), 22 Am. B. R. 32; 168 Fed. 672; 94 C. C. A. 158.

*Contra.* Bray v. Cobb, 1 Am. B. R. 153; 91 Fed. 102.

FORM No. 29.

ORDER OF ADJUDICATION BY REFEREE.

In the District Court of the United States,

for the ..... District of .....

IN THE MATTER

OF

In Bankruptcy No. ....

Bankrupt.

At ..... in said district, on the ..... day of .....  
....., A. D. 19...., before ..... Esq., Referee, the petition  
of ....., ..... and ..... that said

..... be adjudged a bankrupt within the true intent and meaning of the Acts of Congress relating to bankruptcy having been filed with the referee, together with the certificate of the clerk of said court, that the Judge of said court was absent from the ..... division of the ..... district of ..... on the next day after the last day on which pleadings might have been filed, and that no pleadings have been filed by said alleged bankrupt nor by any of his creditors, and that said matter has been referred to this referee in accordance with law: and said petition having been heard and duly considered, now it is ordered that the said petition be granted and the said ..... is hereby declared and adjudged bankrupt accordingly.

Witness, ..... Referee in Bankruptcy for the ..... division of the ..... district of ..... on the ..... day of ..... A. D. 19....

.....,  
*Referee in Bankruptcy.*

#### NOTES.

Sec. 18-f, g, 38-a (1).

General Order XII.

In re Sage (D. C. Mo.), 35 Am. B. R. 436; 224 Fed. 525.

In re Polakoff, 1 Am. B. R. 358.

### FORM No. 30.

#### ORDER DENYING ADJUDICATION.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Alleged Bankrupt.*

At ....., in said District, on ..... day of .....,  
A. D. 19..., before the Honorable ....., Judge of the .....  
..... District of .....

This cause came on to be heard at ....., in said court, upon  
the petition of ..... and ..... and .....

....., that ..... be adjudged a bankrupt within the true intent and meaning of the Acts of Congress relating to bankruptcy, and (here state the proceeding, whether there was no opposition, or if opposed, state what proceedings were had).

And thereupon, and upon consideration of the proofs in said cause (and the arguments of counsel thereon, if any), it was found that the facts set forth in said petition were not proved; and it is therefore adjudged that said ..... is not a bankrupt, and that said petition be dismissed, with costs.

Witness, the Honorable ....., Judge of said court, and the seal thereof, at ....., in said District, on the ..... day of ....., A. D. 19....

*District Judge.*

{ Seal of  
the Court. }

NOTES.

Neustadter v. Chicago Dry Goods Co., 3 Am. B. R. 96; 96 Fed. 830.

**FORM No. 31.**

**ORDER DISMISSING PETITION, VACATING RECEIVERSHIP AND NOTICE OF SETTLEMENT.**

At a stated term of the District Court of the United States for the ..... District of ....., held at the United States Court House, City of....  
....., on the ..... day of ....., 19....

PRESENT:

Hon. ....

*District Judge.*

IN THE MATTER

OF

No. ....

*Alleged Bankrupt.*

The issues raised by the petition and answer in above entitled proceeding having been duly noticed for trial for ..... 19.... by .....  
....., an answering creditor (or alleged bankrupt) herein, and

the same having duly appeared upon the calendar of this court for trial on said date, and duly called for trial, and the petitioning creditors having defaulted thereon,

Now on motion of ....., attorneys for .....,  
answering creditor (or alleged bankrupt),

It is ordered that the petition herein be and the same hereby is dismissed (and the order herein, appointing ....., as receiver be, and the same hereby is vacated) (and the order of this court dated....., 19...., restraining creditors be and the same hereby is vacated).

.....,  
*D. J.*

United States District Court,

..... District of .....

In Bankruptcy.

IN THE MATTER	}	No. ....
OF		
.....		
<i>Alleged Bankrupt.</i>		

SIRS:

Please take notice that we will present the annexed proposed order for settlement to the Hon. ...., at his Chambers at the U. S. Court House, City of ....., on the ..... day of ....., 19...., at ..... o'clock in the ..... noon.

Yours, etc.,

.....,  
*Atty. for Creditors, (or bankrupt,)*  
..... Street,  
.....

To

....., Esq.,  
*Atty. for petitioning creditors.*  
....., Esq.,  
Receiver.



**FORM No. 32.**

**ORDER REFERRING ISSUES TO SPECIAL MASTER.**

At a stated term of the District Court  
of the United States for the .....  
District of ....., held at the  
United States Court House, City of....  
....., on the ..... day  
of ....., 19....

PRESENT:

Hon. ....  
*District Judge.*

IN THE MATTER

OF

No.....

.....  
*Alleged Bankrupt.*

A petition having been filed herein on the ..... day of .....  
19...., by ....., and others praying that .....  
be adjudged an involuntary bankrupt and ....., the alleged  
bankrupt, (or a creditor herein,) having appeared and filed an answer to said  
petition and said proceeding having been duly noticed for trial (and the  
same having appeared upon the calendar of this court).

Now upon motion of ....., attorney for .....,  
it is

Ordered that the issues raised by the petition and answer in the above  
entitled proceeding be and hereby are referred to ....., Esq., as  
Special Master for examination, testimony and report.

.....,  
*D. J.*

NOTES.

Issues raised by petition and answer may be referred to special master.

In re Lavoc (C. C. A. 2d Cir.), 13 Am. B. R. 400; 134 Fed. 237; 67 C. C. A. 19.

Clark et al. v. American Mfg. etc. Co. (C. C. A. 4th Cir.), 4 Am. B. R. 351; 101  
Fed. 962; 42 C. C. A. 120.

W. A. Gage Co. v. Bell, 10 Am. B. R. 696; 124 Fed. 371.

Compare In re King (C. C. A. 7th Cir.), 24 Am. B. R. 606; 179 Fed. 694; 103 C. C.  
A. 240.

FORM No. 33.

NOTICE OF HEARING BEFORE SPECIAL MASTER.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER  OF  .....  <i>Bankrupt.</i>	}	No.....  Notice of hearing.
--	---	-----------------------------------

SIR:

PLEASE TO TAKE NOTICE, that a hearing under the order of reference entered on ....., in the above entitled proceeding will be brought on before ....., Esq., as Special Master, at his office, No. .... Street, City of ....., on the ..... day of ....., 19.., at ..... o'clock ..... M. of that day, or soon thereafter as counsel can be heard.

Dated the ..... day of ..... 19....

Yours, etc.,

.....,  
*Attorney for* .....  
.....

To

....., Esq.,  
*Attorney for* .....  
.....

**FORM No. 34.**

**EXCEPTIONS TO SPECIAL MASTER'S REPORT ON ISSUES OF  
INSOLVENCY, ETC.**

United States District Court,  
..... District of .....

<p>IN THE MATTER</p> <p>OF</p> <p>.....</p> <p><i>Alleged Bankrupt.</i></p>
---

Now comes ..... of the City of .....,  
a creditor of the above named alleged bankrupt, and files the following excep-  
tions to the report of ....., Referee in Bankruptcy, as  
Special Master under the order of reference made in the above entitled pro-  
ceeding, which report is dated the ..... day of .....,  
19...., and was filed in the office of the clerk of the District Court of the  
United States for the ..... District of ....., on the  
..... day of ....., 19...., viz.:

*First.* He excepts to the finding, decision or conclusion of the Special  
Master that the evidence shows that on the ..... day of .....,  
19...., the said alleged bankrupt was insolvent as defined by the Bank-  
ruptcy Act and to each and every part thereof.

*Second.* He excepts to the finding, decision or conclusion of the Special  
Master that the said alleged bankrupt did on the ..... day of  
....., 19...., commit an act of bankruptcy as set forth in the  
petition in bankruptcy filed herein as follows: .....  
and to each and every part thereof.

*Third.* He excepts to the finding, decision or conclusion of the Special  
Master that a decree of adjudication should be made herein and to each and  
every part of such finding, decision or conclusion.

Dated ..... the ..... day of ....., 19....

.....  
*Attorney for* .....  
Creditor.

**FORM No. 35.****ORDER DISMISSING INVOLUNTARY PETITION AND OVERRULING  
REPORT OF SPECIAL MASTER.**

At a stated term of the District Court  
of the United States for the .....  
District of ....., held at the  
..... in the City of .....  
....., on the ..... day  
of ....., 19...

PRESENT:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

.....  
*Alleged Bankrupt.*

A petition having been filed herein in involuntary bankruptcy praying for an adjudication of ..... as an involuntary bankrupt and an answer having been filed on behalf of ..... a creditor of said alleged bankrupt and said matter having been duly referred to ..... as Special Master for the purpose of taking testimony therein and reporting his opinion thereon, and the said Special Master having filed his report herein dated the ..... day of ....., 191...., finding in favor of the petitioner and recommending an adjudication that ..... be adjudged an involuntary bankrupt and a motion to confirm said report having come on for a hearing before this Court on ..... day of ....., 191....,

Now, upon the petition filed herein on the ..... day of ....., 191...., and the answer of ..... filed herein on the ..... day of ....., 191...., and the order referring this matter to the Special Master dated the ..... day of ....., 191...., and the testimony taken before said Special Master and the report of the Special Master dated the ..... day of ....., 191...., and upon all other papers and proceedings had herein and after hearing

..... Esq., in support of said motion, and ..... Esq.,  
in opposition thereto and due deliberation having been had, it is on motion  
of .....,

Ordered that the report of the Special Master be and same is hereby over-  
ruled and set aside, and it is therefore

Adjudged that said ..... is not a bankrupt and that said  
petition in bankruptcy filed the ..... day of .....,  
19..., by ....., be dismissed with costs and disbursements to  
..... creditors to be taxed by the Court.

.....  
D. J.

**FORM No. 36.**

**ORDER CONFIRMING REPORT OF SPECIAL MASTER DISMISSING  
PETITION AND REFERRING RECEIVER'S APPLICATION TO  
SPECIAL MASTER.**

At a stated term of the District Court  
of the United States for the .....  
District of ....., held at the  
United States Court House, City of ....  
....., on the ..... day  
of ....., 19...

**PRESENT:**

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

No. ....

.....  
*Alleged Bankrupt.*

A motion having been made herein by ..... for an order  
confirming the report of ....., Esq., Special Master, appointed  
herein under an order dated ....., 19..., and dismissing the peti-  
tion in bankruptcy heretofore filed herein with costs and for an order vacating  
and discharging the order of ....., 19...., appointing a  
receiver herein and for other and further relief, and the said motion having



duly come on for argument, now on the involuntary petition in bankruptcy filed herein ..... 19, .... by ..... and ....., creditors, the answers filed thereto by ..... a creditor, and by ..... the alleged bankrupt, the order of this court dated ....., 19...., appointing ..... receiver of the estate of said alleged bankrupt, the order of reference herein dated ....., 19...., and the report of said Special Master dated ....., 19...., and notice of this motion with proof of due service thereof, and the report and petition of said ....., verified ....., 19...., for an allowance for his services and disbursements to be paid by the petitioning creditors, and for his discharge as such receiver, and for further relief, and the petition of ....., attorney for said receiver, verified ....., 19...., for an allowance for his services and disbursements as attorney for said receiver, and on all the proceedings had herein, after hearing ....., Esq., of counsel for ....., alleged bankrupt herein, ....., Esq., attorney for the petitioning creditors herein, and ..... Esq., attorney for the receiver herein, and due deliberation having been had, it is

**Ordered, that the report of said Special Master herein be and hereby is** in all respects confirmed and that the petition in bankruptcy filed herein ....., 19...., praying that said ..... be adjudged an involuntary bankrupt be and the same hereby is dismissed with \$. .... costs and disbursements, as taxed, which said sum, ....., ..... and ..... are hereby directed to pay to the said ....., alleged bankrupt, and it is further

**Ordered that the matters of the said report, application and petition of** ..... Esq., receiver herein, and the petition of his said attorneys filed herein ....., 19.... be and the same hereby are referred to ....., Esq., as Special Master for examination, testimony and report thereon with all convenient speed.

.....  
D. J.

FORM No. 37.

RESPONDENT'S BILL OF COSTS AND NOTICE OF TAXATION.

United States District Court,  
for the ..... District of ..... :  
In Bankruptcy.

IN THE MATTER

OF

.....  
*Bankrupt.*

Costs.

Docket fee ..... \$20.00

Disbursements.

Fees of special commissioner.. ..

Stenographer's minutes ..... ..

Witness fees paid to.....

[State names and distance  
traveled.]

Total ..... \$. ....

..... District of ..... }  
County of ..... } ss.:

....., the attorney for the above named .....,  
the respondent herein, being duly sworn, says, that the foregoing disbursements  
have been actually paid and that each of the persons above named as wit-  
nesses actually attended as such witnesses on the trial of this proceeding and  
traveled the distances set opposite their respective names

..... ,

..... ,

Sworn to before me this ..... day of ....., 19...

PLEASE TAKE NOTICE, that the within is a copy of the items of costs and dis-  
bursements of the respondent in the within proceeding and that the same will  
be taxed by the clerk of the District Court of the United States for the.....

..... District of ....., at his office in the Federal Building

in the City of ....., on the ..... day of .....,  
19...., at..... o'clock in the forenoon of that day, and the amount  
inserted in the order.

Yours, etc.

.....,  
*Attorney for*.....,  
Bankrupt.

To ....., Esq.,  
*Attorney for petitioning creditors.*

**FORM No. 38.**

**AFFIDAVIT AND ORDER TO SHOW CAUSE WHY BANKRUPT SHOULD  
NOT BE PUNISHED FOR CONTEMPT FOR FAILURE TO FILE  
SCHEDULES.**

United States District Court,  
..... District of .....:  
In Bankruptcy.

IN THE MATTER  OF  .....  <i>Bankrupt.</i>	}	No.....
--	---	---------

State of ..... }  
County of ..... } ss.:

..... being duly sworn deposes and says, that he is a  
clerk in the office of ..... attorney for petitioning creditors  
herein.

That on the ..... day of ....., 19...., the above  
named bankrupt was duly adjudicated by an order entered in the office of  
the clerk of this Court.

That thereafter on the ..... day of ....., 19....,  
deponent personally served the said bankrupt with a certified copy of said  
order of adjudication at No. .... street, in the City of .....

That deponent knew that said person so served by him was the bankrupt herein.

That deponent is informed and verily believes that numerous demands have been made upon the said ..... to file his schedules in bankruptcy in order that the administration of this proceeding may not be delayed, but that these demands have not been complied with and the said bankrupt continues to neglect to file his schedules, and should be adjudged in contempt of the orders of this Court.

That the reason an order to show cause is asked for herein is because the time is too short for notice of motion for the next motion day, and the administration of this estate ought not to be longer delayed.

Sworn to before me this ..... day of .....,  
19....

#### ORDER TO SHOW CAUSE THEREON.

[Title.]

Upon reading the annexed affidavit of ..... verified the ..... day of ....., 191..., and sufficient reason appearing therefor, it is

Ordered that ..... the above named bankrupt show cause at a term of this Court appointed to be held in the Court House in the City of...  
..... on ..... at ..... o'clock in the ..... noon,  
or as soon thereafter as counsel can be heard, why he should not be adjudged guilty of contempt of court for failure to file schedules and why such other and further relief should not be had as may be just and proper.

Service of a copy of this order and affidavit shall be sufficient by service upon said bankrupt on or before the ..... day of .....,  
191....

.....,

*D. J.*

## FORM No. 39.

## ORDER THAT BANKRUPT FILE SCHEDULES.

At a stated term of the United States  
 District Court for the .....  
 District of ....., held at the  
 United States Court House, City of.....  
 ....., on the ..... day  
 of ....., 19....

PRESENT:

Hon. ....,  
*District Judge.*

IN THE MATTER  OF  ..... <i>Bankrupt.</i>	}	No.....
--	---	---------

A motion having been made to punish the above named bankrupt for contempt for failure to file schedules herein, and said motion having come on for a hearing before this court,

Now, upon reading and filing the notice of motion to punish the above named bankrupt for contempt, and the petition of (or affidavit) ....., annexed thereto; and

After hearing ....., of counsel for the petitioning creditors, in support of said motion, and ....., attorney for .....  
 ....., the bankrupt herein, it is

Ordered that ..... be and he hereby is directed to file his schedules herein on or before the ..... day of ..... 19..., and that upon his failure to file such schedules on or before said day, it is

Ordered and decreed that the said ..... be adjudged in contempt of court.

.....,  
*D. J.*



FORM No. 40.

**AFFIDAVIT TO LIST OF CREDITORS PREPARED BY PETITIONING CREDITORS.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER OF ..... <i>Bankrupt.</i></p>	}	No.....
--	---	---------

<p>County of..... ..... District of....., State of.....</p>	}	ss.:
---	---	------

....., ..... and ..... of  
....., being severally duly sworn, depose and say that they are  
the petitioning creditors in this proceeding; that the said .....,  
the bankrupt, is absent from the said district and cannot be found; that your  
petitioners have made diligent inquiry into his affairs for the purpose of  
ascertaining the names and places of residence of all of his creditors, and  
according to the best of their information, such names and places of residence  
are as set out in the above schedule.

.....  
.....  
.....

Subscribed and sworn to before me  
this ..... day of ..... 19...

## FORM No. 41.

## ORDER DISMISSING INVOLUNTARY PROCEEDINGS BY CONSENT.

At a stated term of the United States  
District Court for the .....  
District of ....., held at the  
United States Court House, City of ....  
....., on the ..... day of  
....., 19...

PRESENT:

Hon. ....,  
*District Judge,*

IN THE MATTER

OF

No. ....

.....  
*Alleged Bankrupt.*

Upon reading and filing the annexed consents of the creditors herein, the affidavit of ....., the alleged bankrupt, duly verified, and the consents of the receiver and the attorneys for the petitioning creditors and receiver, and it appearing to the satisfaction of the court that all the creditors of the above named alleged bankrupt have signed said annexed consent, and due notice having been given, it is, on motion of ....., attorneys for the above named alleged bankrupt,

Ordered that the petition in involuntary bankruptcy filed herein on the ..... day of ....., 19..., against the above named ....., be and the same hereby is dismissed, without costs; and it is further

Ordered that ..... receiver, turn over to the said ....., the alleged bankrupt, all the property, assets and effects now in his possession, and that upon the delivery of said property and assets to the said ....., the said ..... is hereby discharged of his trust and his bond cancelled and discharged.

.....,  
*D. J.*

## NOTES.

**Order dismissing Petition.— Notice to creditors 58 (a), 59 (g).**

**In re Lederer** (D. C. N. Y.), 10 Am. B. R. 492; 125 Fed. 96.

**In re Ryan**, 7 Am. B. R. 562; 114 Fed. 373.

In re Plymouth Cordage Co. et al. (C. C. A. 8th Cir.), 13 Am. B. R. 665; 135 Fed. 1000; 68 C. C. A. 434.

Necessary except when upon merits.

In re Jamaica Slate Roofing and Supply Co., 28 Am. B. R. 763; 197 Fed. 240.

[Ed. Note.] Verified list of creditors with addresses should be attached.

Sec. 53-a no application to dismissal upon the merits.

Lackawanna Leather Co. v. La Porte Carriage Co. (C. C. A. 7th Cir.), 31 Am. B. R. 658; 211 Fed. 318; 127 C. C. A. 604.

In re Chalfein (D. C. Mass.), 35 Am. B. R. 257; 223 Fed. 379.

Neustadter v. Chicago Dry Goods Co., 3 Am. B. R. 96; 96 Fed. 830.

#### Costs.

When petition is dismissed for lack of jurisdiction.

See, In re Philadelphia and Lewes Transportation Co. (D. C. Pa.), 11 Am. B. R. 444; 127 Fed. 896.

In re Williams (D. C. Ark.), 9 Am. B. R. 736; 120 Fed. 34.

The alleged bankrupt should file his bill of costs with the clerk and serve notice of taxation.

In re Haesler-Kohlhoff Carbon Co., 14 Am. B. R. 381; 135 Fed. 867. No allowance to counsel or for damages.

In re Ghiglione, 1 Am. B. R. 580; 93 Fed. 186.

In re Wise (D. C. Wash.), 32 Am. B. R. 510; 212 Fed. 567.

In re Hines, 16 Am. B. R. 538; 144 Fed. 147.

In re McKenzie (D. C. Wash.), 34 Am. B. R. 111; 219 Fed. 630.

Dismissal of petition filed by *bona fide* creditors in the absence of malice will not sustain an action for damages in the State court.

Harvey v. Gartner (La. Sup. Ct.), 34 Am. B. R. 301.

### FORM No. 42.

#### PETITION TO VACATE ADJUDICATION AND DISMISS VOLUNTARY PETITION FOR WANT OF JURISDICTION.

United States District Court,

..... District of .....

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No. ....
---	---	----------

To the District Court of the United States,

for the ..... District of .....

The petition of ..... respectfully shows and alleges:

1. That he is a creditor of the above named ..... having a provable claim for ..... in the sum of \$.....

2. That on the ..... day of ....., 19 ..., the said ..... filed his voluntary petition in bankruptcy in this Court and on said day was adjudicated a bankrupt and the proceeding referred to ..... Esq. one of the referees in bankruptcy in this district.

3. That such order of adjudication and reference was erroneous and should not have been made as this Court is entirely without jurisdiction to adjudicate the said ..... a bankrupt for the reason that the said ..... does not now reside nor has he resided for the greater portion of the six months next preceding the filing of his said petition, within the territorial jurisdiction of this Court nor has he had his domicile or principal place of business therein; but resides and has resided at ..... in the District of ..... and the statements of ..... in his said petition as to his residence by which this Court assumed jurisdiction to adjudicate him a bankrupt, are entirely false and untrue.

4. That the facts as alleged herein by petitioner were ascertained as follows: .....

5. That the adjudication herein was made as a matter of course upon the filing of the petition and without any opportunity to creditors to be heard in opposition thereto.

Wherefore petitioner prays that the order or adjudication of ..... as a bankrupt dated ..... be vacated and his petition in bankruptcy be dismissed for lack of jurisdiction and for such other relief as may be just and proper.

[Verification.]

.....  
*Petitioner.*

**FORM No. 43.**

**PETITION TO VACATE ADJUDICATION IN INVOLUNTARY PROCEEDING.**

United States District Court,

for the ..... District of .....:

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

To the District Court of the United States,

for the ..... District of .....:

The petition of ..... respectfully shows and alleges:

*First.* That he resides in the City of ....., State of .....

*Second.* That your petitioner is a creditor of said bankrupt and his claim is based upon the following facts:

*Third.* That heretofore and on or about the ..... day of .....  
 ....., 19..., your petitioner instituted an action in the .....  
 Court of ..... County against the above named .....,  
 alleged bankrupt, as defendant. That said action was brought to recover the  
 sum \$....., and on the ..... day of ....., 19..., adjudg-  
 ment was rendered in said action in favor of petitioner.

*Fourth.* That an execution upon the said judgment was duly issued to  
 the Sheriff of ..... County, the said judgment having been duly  
 docketed in the office of the Clerk of ..... County. That said execu-  
 tion was duly levied upon the real property of the said defendant.

*Fifth.* That on ....., 19..., a petition in involuntary bank-  
 ruptcy was filed in this court against the above named .....,  
 and a receiver appointed. That thereafter an alleged adjudication was made  
 therein in which the said ..... was declared a bankrupt. The  
 said receiver has made a demand upon the Sheriff to deliver over to him all  
 the property of ..... heretofore levied upon under the execution  
 obtained by petitioner upon his said judgment.

*Sixth.* That your petitioner is informed and verily believes that the  
 aforesaid petition in bankruptcy filed herein did not set forth the jurisdic-  
 tional facts required under the Bankruptcy Act, and is defective and void,  
 and insufficient to confer jurisdiction upon the court to proceed therein. That  
 the said petition and subpoena required to be served upon the bankrupt by  
 law, were never in fact properly served upon the said bankrupt, as required  
 by law to obtain jurisdiction over the said bankrupt, and that the purported  
 service of the same upon the said ..... was illegal and void,  
 in that said petition and subpoena were alleged to have been served outside of  
 this district, and not upon the bankrupt personally nor by publication. That  
 the bankrupt had absconded and left the jurisdiction. That this court never  
 in fact, acquired any jurisdiction whatever in the said bankruptcy proceeding,  
 and the alleged adjudication was for that reason without jurisdiction and void.

*Seventh.* That no previous application for this order has been made.

Your petitioner therefore prays that an order be granted herein, vacating  
 and setting aside the alleged adjudication in bankruptcy herein, vacating the  
 appointment of the receiver herein and all proceedings heretofore had, and  
 dismissing the petition heretofore filed herein.

Dated ....., 19...

[Verification.]

*Petitioner.*

NOTES.

Moving party must be a creditor with provable claim.  
 In re Columbia Real Estate Co., 4 Am. B. R. 411; 101 Fed. 965.



Adjudication not conclusive though not appealed from and may be dismissed upon creditors petition for lack of jurisdiction.

In re Garneau (C. C. A. 7th Cir.), 11 Am. B. R. 679; 127 Fed. 677; 62 C. C. A. 403.

In re San Antonio Land and Irrigation Co. (D. C. N. Y.), 36 Am. B. R. 512; 228 Fed. 984.

In re Guanacevi Tunnel Co., 29 Am. B. R. 229; 201 Fed. 316; 119 C. C. A. 554.

Motion to vacate an adjudication in voluntary proceedings on ground of lack of jurisdiction as to residence denied for laches. In re Urban & Suburban Co. (D. C. N. J.), 12 Am. B. R. 687; 132 Fed. 140.

In re Tully (D. C. N. Y.), 19 Am. B. R. 604; 156 Fed. 634.

In re Niagara Contracting Co. (D. C. N. Y.), 11 Am. B. R. 643; 127 Fed. 782.

Granted when at date of the filing of the petition there was no existing provable debt.

In re Yates (D. C. Cal.), 8 Am. B. R. 69; 114 Fed. 365.

See, In re Ives (C. C. A. 6th Cir.), 7 Am. B. R. 692; 113 Fed. 911; 51 C. C. A. 541.

Petition to vacate granted.

Altonwood Park Co. v. Gwynne (C. C. A. 2nd Cir.), 20 Am. B. R. 31; 160 Fed. 448; 87 C. C. A. 409.

An adjudication warranted by proof of an act of bankruptcy sufficiently alleged may not be set aside because other alleged acts of bankruptcy were not properly pleaded and proved.

In re Lynan (C. C. A. 2nd Cir.), 11 Am. B. R. 466; 127 Fed. 123; 62 C. C. A. 123.

Adjudication is *res adjudicata* upon motion to vacate, where creditor has assented by proving his claim.

In re Hintze (D. C. Mass.), 13 Am. B. R. 721; 134 Fed. 141.

Entire want of jurisdiction over the *res* may be taken advantage of at any time; over the person must be taken promptly.

In re Mason, 3 Am. B. R. 599; 99 Fed. 256.

## FORM No. 44.

### PETITION FOR SERVICE BY PUBLICATION.

United States District Court,

..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No.....

.....  
*Alleged Bankrupt.*

To the Honorable Judge (or Judges) of the District Court of the United States, for the ..... District of .....

The petition of ....., respectfully shows to this court and alleges:

1. That your petitioner is the attorney for the petitioning creditors herein.

2. That an involuntary petition in bankruptcy was filed herein on the ..... day of ....., 19...

3. That upon the filing of said petition herein a subpoena was duly issued by the clerk of this court returnable on the ..... day of ....., 19..., requiring the alleged bankrupt to plead thereto.

4. That the United States Marshal for this district has made return thereon that he has been unable to serve the alleged bankrupt .....

5. That your petitioner has been informed and verily believes that said alleged bankrupt is not within the territorial limits of this district nor can personal service be made upon him in said district.

6. That the present address of said alleged bankrupt outside the jurisdiction of this Court is ..... (or that the said alleged bankrupt has absconded and his present address or whereabouts are unknown).

7. [Set forth facts as to enquiry, etc., upon which above statement is based.]

8. Your petitioner further alleges that ..... the said alleged bankrupt has not designated any person upon whom process might be served for him in this district.

9. That the last known address of ..... the said alleged bankrupt is .....

WHEREFORE, your petitioner prays that an order be made herein permitting service by publication upon the said ..... alleged bankrupt.

Dated ....., 19...

.....,  
*Petitioner.*

[Verification.]

# NOTES.

## Service outside of district.

Pursuant to Sec. 18-a of Act. Equity Rule XIII.

Hills v. McKinness Co. (D. C. O.), 26 Am. B. R. 329; 188 Fed. 1012.

In re McDonald, 30 Am. B. R. 120; 4 U. S. Dist. Ct. Haw.

In re Francis Levy Outfitting Co. Ltd. (D. C. Haw.), 29 Am. B. R. 13.

In re Shoichi Hoshida, (D. C. Haw.), 32 Am. B. R. 451.

In re Norton (D. C. N. Y.), 17 Am. B. R. 504; 148 Fed. 301.

An order for service by publication which does not designate any day upon which the alleged bankrupt is required to appear and plead is defective as not in conformity to Sec. 18-a of the Act.

Bauman Diamond Co. v. Hart (C. C. A. 5th Cir.), 27 Am. B. R. 632; 192 Fed. 498; 113 C. C. A. 104.

Compare for ruling under Act of 1867.

Jobbins v. Montague (D. C. N. Y.), Fed. Case 7329.

[See notes Form No. 11.]

**FORM No. 45.****ORDER OF PUBLICATION.**

United States District Court,  
 ..... District of .....:  
 In Bankruptcy.

IN THE MATTER

OF

No.....

.....  
*Alleged Bankrupt.*

It appearing to my satisfaction from the petition of....., verified the ..... day of ....., 19..., that a petition was filed in this court on the ..... day of ....., 19..., praying that the above named ..... be adjudged a bankrupt and that a subpoena directed to said alleged bankrupt was duly issued out of this court to the marshal of this district and that the said marshal has been unable to serve the same upon the alleged bankrupt, and that said alleged bankrupt is not now within this district so that personal service may be made upon him, and that diligent efforts have since been made to ascertain the whereabouts of the said alleged bankrupt ....., but that he is not now within the jurisdiction of this court, it is

Now, on motion of ....., Esq., attorney for the petitioning creditors,

Ordered, That the above named alleged bankrupt plead or answer on or before the ..... day of ....., 19... to the petition herein, filed in the office of the clerk of this court, on the.....day of..... 19...; and in case of his failure to plead or answer thereto, adjudication shall be made against him according to the prayer of said petition.

And it is further ordered that this order be published in the ..... once a week for two successive weeks, said publication to commence not later than the ..... day of ....., 19..., and that a copy of this order be mailed to the said alleged bankrupt at his last known residence. to wit: No. .... Street, in the City of ....., on or before the date of the first publication.

Dated ....., 19...

.....,  
*D. J.*

**FORM No. 46.**

**PETITION TO AMEND PETITION.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No.....
---	---	---------

To the District Court of the United States,  
for the ..... District of .....:

The petition of ....., and .....  
respectfully shows and alleges:

1. That they are the petitioning creditors herein.
  2. That on the ..... day of ....., 19..., your petitioners duly filed in this court, a petition that the above named ..... be adjudged an involuntary bankrupt and the bankrupt's time to appear in said proceeding has not yet expired.
  3. That through inadvertence, the following allegations were omitted in the ..... paragraph of said petition in bankruptcy:.....  
.....  
.....
  4. That by reason of petitioners' ignorance of the true facts at the time the said petition in bankruptcy was verified and filed the following act of bankruptcy on the part of the said ..... was not alleged nor set forth correctly in said petition: .....  
.....  
That said facts have come to petitioners' knowledge from the following sources: .....  
.....
  5. That no previous application has been made for an order herein.
- Wherefore, petitioners pray that the petition in bankruptcy filed herein on the ..... day of ....., 19..., be amended *nunc pro tunc* by supplying and adding the following allegation to paragraph.....

of said petition: ".....  
 .....  
 .....,"  
 and further amended by adding and incorporating therein, with the same force  
 and effect as if originally therein, the following new paragraph: ".....  
 .....,"  
 and for such other and further relief as may be just and proper.

.....,  
 .....  
 .....

*Petitioners.*

[Verification.]

#### NOTES.

**Act. Sec. 18. Genl. Orders VI, XI.**

**Generally a matter of discretion for the Court.**

*Wilder v. Watts*, 15 Am. B. R. 57; 138 Fed. 426.

*Armstrong v. Fernandez* (U. S. Sup.), 19 Am. B. R. 746; 208 U. S. 324; 52 L. Ed. 514.

*Ryan v. Hendricks* (C. C. A. 7th Cir.), 21 Am. B. R. 570; 166 Fed. 94; 92 C. C. A. 78.

In re Sig. H. Rosenblatt & Co. (C. C. A. 2nd Cir.), 28 Am. B. R. 401; 193 Fed. 638; 113 C. C. A. 506.

Includes referee.

In re *Brumelkamp*, 2 Am. B. R. 318; 95 Fed. 814.

When creditor waives right to object.

In re *Broadway Savings Trust Co.* (C. C. A. 8th Cir.), 18 Am. B. R. 254; 152 Fed. 152; 81 C. C. A. 58.

When granted.

Unusually granted to cure an error due to mistake of counsel.

In re *Freund*, 1 Am. B. R. 25.

Mistake in name of bankrupt.

*Gleason v. Smith, Perkins & Co.* (C. C. A. 3rd Cir.), 16 Am. B. R. 602; 145 Fed. 895; 76 C. C. A. 427.

Clerical error. In re *Bellah*, 8 Am. B. R. 310; 116 Fed. 69.

*Millan v. Exchange Bank of Mannington* (C. C. A. 4th Cir.), 24 Am. B. R. 889; 183 Fed. 753; 106 C. C. A. 327; certiorari denied, 219 U. S. 584; 55 L. Ed. 346.

Amendment of petition which alleges insolvency at the date of filing the petition so as to allege insolvency at the date the alleged act of bankruptcy was committed may be allowed.

In re *Pangborn*, 26 Am. B. R. 40; 185 Fed. 673.

In re *Richardson* (D. C. Mass.), 27 Am. B. R. 590; 192 Fed. 50.

To supply a specific allegation that alleged bankrupt is not within one of the excepted classes.

*Beach v. Macon Grocery Co.* (C. C. A. 5th Cir.), 9 Am. B. R. 762; 120 Fed. 736; 57 C. C. A. 150; In re *Brett*, 12 Am. B. R. 492; 130 Fed. 981. In re *White*, 14 Am. B. R. 241; 135 Fed. 199. In re *Plymouth Cordage Co.* (C. C. A. 8th Cir.), 13 Am. B. R. 665; 135 Fed. 1000; 68 C. C. A. 434. In re *Crenshaw*, 19 Am. B. R. 502; 156 Fed. 638.

In re *Shoesmith* (C. C. A. 7th Cir.), 13 Am. B. R. 645; 135 Fed. 684; 68 C. C. A. 322.



**Armstrong v. Fernandez** (U. S. Sup.), (*supra*).

**Conway v. German** (C. C. A. 4th Cir.), 21 Am. B. R. 577; 166 Fed. 67; 91 C. C. A. 653.

Or to supply an insufficient statement of nature and amount of claims of petitioners or general insufficiency of allegation.

**Conway v. German** (*supra*).

**To correct variance between pleadings and proof.**

In re Lang, 3 Am. B. R. 231; 97 Fed. 196. In re Miller, 5 Am. B. R. 140; 104 Fed. 764; Chicago Motor Vehicle Co. v. American Oak Leather Co. (C. C. A. 7th Cir.), 15 Am. B. R. 804; 141 Fed. 518; 72 C. C. A. 576. In re Hark Bros., 15 Am. B. R. 460; 142 Fed. 179; aff'd sub nom., Hark v. C. M. Allen Co. (C. C. A. 3rd Cir.), 17 Am. B. R. 3; 146 Fed. 665; 77 C. C. A. 91.

**When not granted.**

When defect is fatal to jurisdiction.

No act of bankruptcy alleged.

**Woolford v. Diamond State Steel Co.**, 15 Am. B. R. 31; 138 Fed. 582.

**Armour & Co. v. Miller** (C. C. A. 5th Cir.), 31 Am. B. R. 356; 209 Fed. 784; 126 C. C. A. 508.

In re Farthing (D. C. No. Car.), 29 Am. B. R. 732; 202 Fed. 557.

Claims aggregate less than \$500, by adding other creditors. In re Stein, 12 Am. B. R. 364.

In re Charles Town Light & Power Co., 25 Am. B. R. 687; 183 Fed. 160.

Or in effect a new and independent proceeding.

In re Hyde & Co., 4 Am. B. R. 602; 103 Fed. 617.

In re Mercur (C. C. A. 3rd Cir.), 10 Am. B. R. 505; 122 Fed. 384; 58 C. C. A. 472; aff'g 8 Am. B. R. 275; 116 Fed. 655. In re Pure Milk Co., 18 Am. B. R. 735; 154 Fed. 682. In re Harris, 19 Am. B. R. 204; 155 Fed. 216.

In re Kaufman (C. C. A. 2nd Cir.), 23 Am. B. R. 429; 176 Fed. 93; 99 C. C. A. 107.

**Or adding a later act of bankruptcy.**

In re Riggs Restaurant Co. (C. C. A. 2nd Cir.), 11 Am. B. R. 508; 130 Fed. 691; 66 C. C. A. 48. In re Sears (C. C. A. 2nd Cir.), 8 Am. B. R. 713; 117 Fed. 294; 54 C. C. A. 532, rev'g in part s. c. 7 Am. B. R. 279; 112 Fed. 58. Wilder v. Watts, 15 Am. B. R. 57; 138 Fed. 426. In re Haff (C. C. A. 2nd Cir.), 13 Am. B. R. 362; 136 Fed. 78; 68 C. C. A. 646.

**Walker v. Woodside** (C. C. A. 9th Cir.), 21 Am. B. R. 132; 164 Fed. 680; 90 C. C. A. 644.

Within judicial discretion.

**Pittsburgh Laundry Supply Co. v. Imperial Laundry Co.** (C. C. A. 3rd Cir.), 18 Am. B. R. 756; 154 Fed. 662; 83 C. C. A. 486.

*Contra.* In re Nusbaum (D. C. N. Y.), 18 Am. B. R. 598; 152 Fed. 835.

In re Hamrick, 23 Am. B. R. 721; 175 Fed. 279.

**Amendment can only be granted by Judge not by Referee.**

**Practice.**

Petition or affidavit accompanied by a copy of proposed amendment and on due notice to all parties who have appeared or intervened.

Petition must show why act of bankruptcy proposed to be set forth by amendment was not set up in original petition.

In re Pure Milk Co., 18 Am. B. R. 735; 154 Fed. 682.

In re Portner, 18 Am. B. R. 89; 149 Fed. 799.

When question of amendment not properly before the Court.

In re Pressed Steel Wagon Goods Co. (D. C. Mich.), 27 Am. B. R. 44; 193 Fed. 811.

**Effect.**

Relates back to time of filing original petition and has same effect as if originally included. Ryan v. Hendricks (*supra*).

In re Beerman, 7 Am. B. R. 431; 112 Fed. 662.

Chicago Motor Vehicle Co. v. American Oak Leather Co. (*supra*).

And does not advance such date under Sec. 60a relating to preferences.

First State Bank of Corwith v. Haswell (C. C. A. 8th Cir.), 23 Am. B. R. 330; 174 Fed. 209; 98 C. C. A. 217.

An amendment stating for the first time an act of bankruptcy does not relate back to the filing of the original petition.

Armour & Co. v. Miller (C. C. A. 5th Cir.), (*supra*).

In re Condon (C. C. A. 2nd Cir.), 31 Am. B. R. 754; 209 Fed. 800; 126 C. C. A. 524; aff'g, s. c. 29 Am. B. R. 907; 198 Fed. 947.

**FORM No. 47.**

**PETITION TO TRANSFER PROCEEDINGS TO ANOTHER DISTRICT.**

District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

<p>IN THE MATTER</p> <p>OF</p> <p>.....</p> <p style="text-align: right;"><i>Bankrupt.</i></p>
--

To the District Court of the United States for the ..... District of .....:

The petition of ..... respectfully shows and alleges:

1. That he is a creditor of the above named bankrupt and one of the petitioning creditors in this proceeding.

2. That on the ..... day of ....., 19..., petitioner with other creditors filed an involuntary petition against the above named ..... in this Court, and said proceeding is still pending and no order of adjudication has been entered herein.

3. That on the ..... day of ....., 19..., in the District

Court for the ..... district of ....., certain other creditors of the said ..... filed a petition that he be adjudged a bankrupt in that jurisdiction, and in said proceeding the said ..... was on the ..... day of ....., 19..., duly adjudicated a bankrupt and the proceeding referred to one of the referees of said Court.

4. That for the following reasons the District Court for the ..... district of ..... can proceed with the administration of the affairs of this bankrupt for the greatest convenience of parties in interest:

[Here set forth such reasons.]

Wherefore, your petitioner prays that this proceeding be transferred to the ..... district of ....., and consolidated with the proceeding in the same matter now pending in said district.

.....,

*Petitioner.*

[Verification.]

### FORM No. 48.

#### ORDER TRANSFERRING PROCEEDINGS TO ANOTHER DISTRICT.

At a Stated Term of the District Court of the United States, held in and for the ..... district of ....., at the Court House in the City of ..... on the ..... day of ..... 19...

PRESENT:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

.....  
*Bankrupt.*

Upon reading and filing the annexed petition of ..... duly verified, and upon all the proceedings heretofore had herein, and it appearing to the satisfaction of this Court that the above named ..... has been duly adjudicated a bankrupt in similar proceedings in the District Court of the United States for the ..... district of .....

and it further appearing that said District Court can proceed with the administration and conduct of the said bankrupt's estate for the greatest convenience of the parties in interest and no one appearing in opposition thereto, it is on motion of ..... attorney for the petitioner,

Ordered, That these proceedings be and the same hereby are transferred to the District Court for the ..... district of ..... and consolidated with the proceedings in the same matter now pending in said Court.

.....,

*D. J.*

#### NOTES.

##### **Sec. 32; and General Order VI.**

*In re Tybo Mining & Reduction Co.*, 13 Am. B. R. 68; 132 Fed. 697.

*Kyle Lumber Co. v. Bush*, 13 Am. B. R. 535; 133 Fed. 688; 66 C. C. A. 592.

Consolidation of proceedings.

*Salt Lake Valley Canning Co. v. Collins* (C. C. A. 9th Cir.), 23 Am. B. R. 716; 176 Fed. 91; 99 C. C. A. 611.

*In re General Metals Co.*, 12 Am. B. R. 770; 133 Fed. 84.

*In re Sears*, 7 Am. B. R. 279; 112 Fed. 58.

*In re United Button Co.*, 13 Am. B. R. 454; 132 Fed. 378.

*In re Waxelbaum* (D. C. N. Y.), 3 Am. B. R. 392; 98 Fed. 589.

Court first acquiring jurisdiction has exclusive jurisdiction to determine the question of a transfer for, "convenience of parties" under Sec. 32 of the Act.

*In re Sterne & Levi* (D. C. Tex.), 26 Am. B. R. 259; 190 Fed. 70.

Compare *In re Elmira Steel Co.*, 5 Am. B. R. 484; 109 Fed. 456.

Meaning of terms, "party in interest" and "greatest convenience."

*In re Sterne & Levi* (*supra*).

*In re United Button Co.* (*supra*).

## PART II.

### RECEIVER IN BANKRUPTCY AND CUSTODY OF PROPERTY BY MARSHAL.

- FORM No. 49. Special Warrant to Marshal and Return thereon.
50. Bond to Marshal upon Release of Property to Bankrupt.
  51. Bond of Petitioning Creditor upon Seizure by Marshal.
  52. Petition for Appointment of Receiver before Adjudication.
  53. Order appointing Receiver before Adjudication and Injunction.
  54. Consent of Bankrupt to Appointment of Receiver.
  55. Bond of Petitioning Creditor upon Appointment of Receiver.
  56. Petition that Bond of Petitioning Creditor be increased.
  57. Order denying Petition to increase Bond.
  58. Petition for Appointment of Receiver after Adjudication by Referee and Consent of Creditors thereto.
  59. Order appointing Receiver after Adjudication.
  60. Bond of Receiver.
  61. Petition for Order reducing Amount of Receiver's Bond and Order thereon.
  62. Petition by Receiver to employ Counsel.
  63. Affidavit of Attorney thereon.
  64. Order authorizing Receiver to employ Counsel.
  65. Petition by Receiver to continue Business of Bankrupt.
  66. Order authorizing Receiver to continue Business of Bankrupt.
  67. Petition by Receiver to discharge Liens.
  68. Order discharging Liens.
  69. Order that Receiver complete Contracts.
  70. Affidavit by Receiver for Leave to begin Suit.
  71. Order authorizing Receiver to sue.
  72. Order authorizing Receiver to join in Bankruptcy Proceeding.
  73. Order allowing Suit against Receiver.
  74. Order directing Delivery of Assets by Receiver to Trustee.
  75. Report of Receiver.
  76. Receiver's Final Account and Oath.
  77. Notice of Hearing upon Receiver's Accounts before Special Master.
  78. Exceptions to Receiver's Accounts.
  79. Petition for Allowance by Attorney for Receiver.
  80. Report of Special Master on Receiver's Account.
  81. Notice of Motion to confirm Report of Special Master on Receiver's Accounts.
  82. Order confirming Report of Special Master on Receiver's Account.
  83. Order confirming Report and directing Payment by Petitioning Creditors upon Dismissal of Involuntary Petition.
  84. Order vacating Appointment of Receiver.
  85. Petition to issue Receiver's Certificates.
  86. Order authorizing Issuance of Receiver's Certificates.
  87. Answer of Lienor to Receiver's Petition to issue Certificates.
  88. Receiver's Certificate.
  89. Petition for Appointment of Ancillary Receiver in Court of Ancillary Jurisdiction.
  90. Order appointing Ancillary Receiver.



**FORM No. 49.**

[Official.]

**SPECIAL WARRANT TO MARSHAL.**

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER

OF

.....  
*Bankrupt.*

To the Marshal of said District, or to either of his deputies, greeting:

Whereas a petition for adjudication of bankruptcy was, on the ..... day of ....., A. D. 19..., filed against ....., of the County of ....., State of ....., in said district, and said petition is still pending; and whereas it satisfactorily appears that said ..... has committed an act of bankruptcy [*or* has neglected *or* is neglecting, or is about to so neglect his property that it has thereby deteriorated *or* is thereby deteriorating *or* is about thereby to deteriorate in value], you are therefore authorized and required to seize and take possession of all the estate, real and personal, of said ....., and of all his deeds, books of accounts, and papers, and to hold and keep the same safely subject to the further order of the court.

Witness the Honorable ....., Judge of the said court, and the seal thereof, at ....., in said district, on the ..... of ....., A. D. 19...

.....,  
*D. J.*

{ Seal of  
the Court. }

**RETURN BY MARSHAL THEREON.**

By virtue of the within warrant, I have taken possession of the estate of the within-named ....., and of all his deeds, books of account and papers which have come to my knowledge.

.....,  
*Marshal [or Deputy Marshal].*

## FEES AND EXPENSES.

1. Service of warrant.....		
2. Necessary travel, at the rate of six cents a mile each way....		
3. Actual expenses in custody of property and other services, as follows .....		
[Here state the particulars].		

.....,  
*Marshal [or Deputy Marshal].*

## NOTES.

**Reference.** Sec. 69a.

**Cross-reference.** Secs. 2, (3), (15), 3-e, 38-a, (3).

**General Orders, X, XIX.**

This remedy little used as the equivalent remedies of a receiver and injunction are safer and accomplish much the same result.

Compensation of marshal when he has taken possession of property under this section. Reasonable fees.

In re Adams Sartorial Co., 4 Am. B. R. 107; 101 Fed. 215.

In discretion of court.

In re Scott, 3 Am. B. R. 625; 96 Fed. 607.

"Issuance of a warrant enforcing and directing the Marshal to seize the property and hold it subject to further orders. To justify this course, not necessary to show the 'absolute necessity' for seizing the estate, but it will be sufficient to make out a *prima facie* case in support of the petition in bankruptcy, i. e., to offer satisfactory proof by affidavit that the respondent has committed an act of bankruptcy, or the creditor may secure the issuance of the warrant by showing that the conduct of the alleged bankrupt with reference to his property is, or has been, or will be so neglectful as to cause deterioration in value of the property. The bond shall conform to section 69a."

Black, "Law & Practice in Bankruptcy." p. 504.

Petition for warrant to seize property should be separate and distinct from involuntary petition to secure an adjudication.

In re Kelly, 1 Am. B. R. 306; 91 Fed. 504.

Appointment of marshal. Taking possession of property found in possession of third person holding it as the bankrupt's agent, custodian or bailee.

Martin v. Spencer, 29 Am. B. R. 264; 203 Fed. 210.

**FORM No. 50.**

[*Official.*]

**BOND TO MARSHAL UPON RELEASE OF PROPERTY TO BANKRUPT.**

Know all men by these presents:

That we, ....., as principal, and ....., as sureties, are held and firmly bound unto ....., marshal of the United States for the ..... District of ....., in the full and just sum of ..... dollars, to be paid to the said ....., his executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this ..... day of ....., A. D. 19...

The condition of this obligation is such that whereas a petition in bankruptcy has been filed in the district court of the United States for the..... District of ....., against the said ....., and the said court has issued a warrant to the marshal of the United States for said district, directing him to seize and hold property of the said ....., subject to the further order of the court, and the said property has been seized by said marshal as directed, and the said district court, upon a petition of said ....., has ordered the said property to be released to him.

Now, therefore, if the said property shall be released according to the said ....., and the said ....., being adjudged a bankrupt, shall turn over said property or pay the value thereof in money to the trustee, then the above obligation to be void; otherwise to remain in full force and virtue.

Sealed and delivered in the presence of ..... [SEAL.]  
..... [SEAL.]  
..... [SEAL.]

Approved this ..... day of ....., A. D. 19...  
.....,  
*District Judge.*

**FORM No. 51.**

**BOND OF PETITIONING CREDITOR, UPON SEIZURE BY MARSHAL.**

Know all men by these presents:

That we, ....., as principal, and ....., as sureties, are held and firmly bound unto ....., in the full and just sum of ..... dollars to be paid to the said ....., executors, administrators, or assigns, to which payment, well and truly to

be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this ..... day of ....., A. D. 19...

The condition of this obligation is such that whereas a petition in bankruptcy has been filed in the district court of the United States for the ..... District of ..... against the said ....., and the said ..... has applied to that court for a warrant to the marshal of said district directing him to seize and hold the property of said ....., subject to the further orders of said district court.

Now, therefore, if such a warrant shall issue for the seizure of said property, and if the said ..... shall indemnify the said ..... for such damages as he shall sustain in the event such seizure shall prove to have been wrongfully obtained, then the above obligation to be void; otherwise to remain in full force and virtue.

Sealed and delivered in

presence of ..... [SEAL.]  
 ..... [SEAL.]  
 ..... [SEAL.]

Approved this ..... day of ....., A. D. 19...

*District Judge.*

[Justification of sureties may be added.]

### FORM No. 52.

#### PETITION FOR APPOINTMENT OF RECEIVER BEFORE ADJUDICATION.

United States District Court,  
 for the ..... District of .....:  
 In Bankruptcy.

IN THE MATTER

OF

.....  
*Alleged Bankrupt.*

To the Honorable .....  
 Judge of the United States District Court,  
 for the ..... District of .....:

The petition of ..... respectfully shows and alleges, upon information and belief:

1. That on the ..... day of ....., 19..., petitioner together with ..... and ....., creditors of the above named ....., verified and filed a petition in this court that he be adjudged an involuntary bankrupt within the purview of the United States Bankruptcy Act. That the said petition was based on an act (or acts) of bankruptcy committed by the said ....., to wit, (1) .....

(2) .....

That such proceeding is pending and will not be determined for some time.

2. That the said ..... was carrying on business as a manufacturer of (or dealer in) .....; that his principal place of business is at .....; that the said ..... has a large amount of merchandise now situated at his place of business; that the said merchandise consists of .....

3. That your petitioner is informed and verily believes that the condition of the alleged bankrupt's affairs and business is such as to render it absolutely necessary that a receiver be appointed at once to preserve such property and business, pending the issue of the bankruptcy proceedings. That the facts in regard to same are as follows: .....

4. That petitioner files herewith bond as required by Sect. 3-e of the Bankruptcy Act.

5. That the assets of the said alleged bankrupt, as your petitioner has been informed and verily believes, consist of ..... and ....., hereinbefore mentioned; and that said assets are of the value of \$.....

6. (That it will be to the best interests of this estate that the business of the alleged bankrupt at ..... be continued for a limited period by the receiver herein for the following reasons: .....)

7. That no previous application has been made for this order.

Wherefore your petitioner respectfully prays that a receiver be appointed of all the assets and property of every kind of the said alleged bankrupt; (and



that such receiver be allowed to carry on the business of the said alleged bankrupt for a limited period as the court may direct) and for such other order in the premises as may be just and proper.

Dated ....., 19...

.....  
*Petitioner.*

[Verification.]

**FORM No. 53.**

**ORDER APPOINTING RECEIVER BEFORE ADJUDICATION WITH  
INJUNCTION.**

At a stated term of the District Court  
of the United States held in and for the  
..... District of ....., at  
the Court House in the City of.....,  
on the ..... day of ....., 19...

PRESENT:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

} In Bankruptcy No. ....

.....  
*Alleged Bankrupt.*

Upon the annexed petition of ..... verified the .....  
day of ....., 19.., and the petition in bankruptcy filed herein against  
the above named alleged bankrupt, in the office of the clerk of this court  
on the ..... day of ....., 19..., and upon the bond of  
the petitioning creditor duly filed and approved herewith, and it appearing  
that a subpoena has been duly issued against said alleged bankrupt as required  
by law, and that the appointment of a receiver is absolutely necessary for the  
preservation of this estate, now on motion of.....attorneys  
for the petitioning creditors herein,

It is ordered, that ....., Esq., be, and he hereby is appointed  
receiver of the property, assets and effects of the above named alleged bank-  
rupt, with all the usual rights and powers thereof until the further order of  
this court, in the premises,

And it is further

Ordered, that the said receiver give a bond to the people of the United States in the sum of \$. . . . . conditioned for the faithful discharge of his duties as such receiver.

And it is further

Ordered, that said alleged bankrupt forthwith deliver to said receiver all of his property, assets and effects now in his possession or under his control, and the said alleged bankrupt and all other persons, firms, corporations, all creditors of the said alleged bankrupt, as well as their and each of their attorneys, agents and servants, and all Sheriffs, Marshals and other officers, deputies and their employees are hereby jointly and severally restrained and enjoined from removing, transferring or otherwise interfering with the property, assets and effects of the above named alleged bankrupt and from prosecuting, executing or suing out of any court any process, attachment, replevin or other writ for the purpose of taking possession, impounding or interfering with any property, assets or effects of the above named alleged bankrupt, and from molesting, disturbing or interfering with the receiver herein appointed in the discharge of his duties.

.....,  
D. J.

#### NOTES.

Act, Sec. 2, (3). Cross References, Secs. 2, (15), 3-e, 69-a. By Sec. 1-a (4) word "bankrupt" shall include a person against whom an involuntary petition has been filed.

Order appointing Receiver before adjudication.

Indemnity bond must be furnished.

Authority of Court conditioned on this being done.

Beach v. Macon Grocery Co. (C. C. A. 5th Cir.), 8 Am. B. R. 751; 116 Fed. 143; 53 C. C. A. 463.

When the preservation of the estate demands such intervention.

In re Desrochers (D. C. N. Y.), 25 Am. B. R. 703; 183 Fed. 991.

Are but ancillary to the proceedings in bankruptcy.

T. E. Hill Co. v. U. S. Fidelity and Guaranty Co. (Ill. Sup. Ct.), 33 Am. B. R. 781; 250 Ill. 242; 95 N. E. 150.

**Authority to appoint:** In re Oakland Lumber Co. (C. C. A. 2nd Cir.), 23 Am. B. R. 181; 174 Fed. 634; 98 C. C. A. 388.

In re Fixen, 2 Am. B. R. 822; 96 Fed. 748.

In re Florcken, 5 Am. B. R. 802; 107 Fed. 241.

Boonville National Bank v. Blakey (C. C. A. 7th Cir.), 6 Am. B. R. 13; 107 Fed. 891; 47 C. C. A. 43.

Appointment of receiver after general assignment.

In re Federal Mail and Express Company (D. C. N. Y.), N. Y. Law Jour. July 3, 1916.

In re D. & E. Dress Company, Inc. (D. C. N. Y.), N. Y. Law Jour. July 5, 1916. Even though corporation was not subject to adjudication as a bankrupt.

In re T. E. Hill Co. (C. C. A. 7th Cir.), 20 Am. B. R. 73; 159 Fed. 73; 86 C. C. A. 263. Appointment of a receiver denied, when no necessity therefor.

Rowland v. Auto. Car Co., 13 Am. B. R. 799; 133 Fed. 835.

In re Knopf, 16 Am. B. R. 432; 144 Fed. 245.

In re Moody, 12 Am. B. R. 718; 131 Fed. 525.

In re Benedict, 15 Am. B. R. 232; 140 Fed. 55.

When property is in hands of State receiver previously appointed.

Ingram v. Ingram Dart Lighterage Co. (D. C. Ga.), 226 Fed. 58.

Notice to alleged bankrupt proper, but not necessary.

In re Abrahamson and Bretstein, 1 Am. B. R. 44.

In re Standard Cordage Co. (D. C. N. Y.), 30 Am. B. R. 448; 184 Fed. 156.

An appointment without notice is not in a constitutional sense a deprivation of property without due process of law.

Latimer v. McNeal (C. C. A. 3rd Cir.), 16 Am. B. R. 43; 142 Fed. 451; 73 C. C. A. 567; aff'g In re Francis (D. C. Pa.), 14 Am. B. R. 676; 136 Fed. 912.

Bryan v. Bernheimer (U. S. Sup.), 5 Am. B. R. 623; 181 U. S. 188; 45 L. Ed. 314.

May be appointed to take charge of the property although estate is being administered by assignee or receiver in State court.

In re Etheridge Furniture Co., 1 Am. B. R. 112; 92 Fed. 329.

Bauman Diamond Co. v. Hart (C. C. A. 5th Cir.), 27 Am. B. R. 632; 192 Fed. 498; 113 C. C. A. 104.

Appointment of receiver discretionary with the court and *mandamus* does not lie to compel such appointment.

Edinburg Coal Co. v. Humphrey (C. C. A. 7th Cir.), 13 Am. B. R. 593; 134 Fed. 839; 67 C. C. A. 435.

Order appointing receiver cannot be attacked collaterally in the same or other court.

Ross v. Stroh (C. C. A. 3rd Cir.), 21 Am. B. R. 644; 165 Fed. 628; 91 C. C. A. 616.

White v. Davis, 134 Ga. 274; 67 S. E. 716.

#### Effect of appointment.

In re Nelson & Bro. Co., 18 Am. B. R. 66; 149 Fed. 590.

In re Alton Mfg. Co., 19 Am. B. R. 805; 158 Fed. 367.

Title to property in hands of receiver.

In re La Plume Milk Co., 16 Am. B. R. 729; 145 Fed. 1013.

Power of Court to protect its receiver.

Mason v. Wolkowich (C. C. A. 1st Cir.), 17 Am. B. R. 709; 150 Fed. 699; 80 C. C. A. 435.

Preservation of receiver's rights acquired in an involuntary proceeding pending when adjudication follows in a voluntary proceeding.

In re New Chattanooga Hardware Co. (D. C. Tenn.), 27 Am. B. R. 77; 190 Fed. 241.

#### What petition should state.

"Absolutely necessary for preservation of estate."

In re Oakland Lumber Co. (*supra*).

In re Rosenthal, 16 Am. B. R. 448; 144 Fed. 548.

T. S. Faulk & Co. v. Steiner, Lobman & Frank et al. (C. C. A. 7th Cir.), 21 Am. B. R. 623; 165 Fed. 861; 91 C. C. A. 547.

Consent of bankrupt alone, not sufficient, s. c.

#### Provisions of the order.

Order should fix amount of bond, and specify powers.

Order should fix time for filing petitioning creditors' bond before receiver takes possession.

In re Haff (C. C. A. 2nd Cir.), 13 Am. B. R. 354; 135 Fed. 742; 68 C. C. A. 380.

What an order directing bankrupt to deliver books to receiver should provide.

In re Geo. Harris, 20 Am. B. R. 911; 164 Fed. 292.

**Review of order.**

An appeal cannot be had from an order appointing a receiver in bankruptcy, but where the appointment is made by the same order which directs service upon the alleged bankrupt by publication and such order is reversed and set aside on appeal, the appointment of the receiver falls with it.

Bauman Diamond Co. v. Hart (C. C. A. 5th Cir.), 27 Am. B. R. 632; 192 Fed. 498; 113 C. C. A. 104.

In re Cash-Papworth, Grow-Sir [In re Franklin Sugar Refining Co.] (C. C. A. 2nd Cir.), 31 Am. B. R. 709; 210 Fed. 24; 126 C. C. A. 604.

When appeal is pending from decree or order dismissing petition in involuntary bankruptcy, property will not be taken out of hands of receiver.

In re Ward, 28 Am. B. R. 36; 194 Fed. 179.

**Powers of receiver.**

In re Heim Milk Product Co. (D. C. N. Y.), 25 Am. B. R. 746; 183 Fed. 787.

No authority to compromise claims against bankrupt estate without order of Court.

Southern Steel & Iron Co. v. Hickman & Co. (C. C. Ala.), 27 Am. B. R. 203, 208; 190 Fed. 888.

**Duties of.**

In re Desrochers (D. C. N. Y.), (*supra*).

In re Tisch, 29 Am. B. R. 339; 202 Fed. 1018.

**FORM No. 54.**

**CONSENT OF BANKRUPT TO APPOINTMENT OF RECEIVER.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER	}	No.....
OF		
..... <i>Bankrupt.</i>		

I hereby consent to the appointment of a receiver as prayed for in the foregoing petition. (and that I be adjudged a bankrupt, as prayed for in the petition of ....., and others, verified ....., 19...), and I hereby waive any bond on the part of the petitioning creditors.

Dated ....., ....., 19...

.....

STATE OF ..... }  
County of ..... } ss.:

On this ..... day of ....., 19..., before me personally appeared ....., to me known and known to me to be the person described in and who executed the foregoing consent and duly acknowledged to me that he executed the same.

**FORM No. 55.**

**BOND OF PETITIONING CREDITOR UPON APPOINTMENT OF RECEIVER.**

District Court of the United States,  
..... District of .....

IN THE MATTER

OF

In Bankruptcy

.....  
*Bankrupt.*

Know all men by these presents:

That .....  
.....  
.....  
as principal and the ..... Company, having an office and usual place of business at No. .... Street, in the City of ....., State of ....., as surety, are held and firmly bound unto .....  
.....  
..... in the full and just sum of .....  
..... Dollars, lawful money of the United States of America, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents. Sealed with our seals and dated the ..... day of ....., in the year .....

Whereas, a petition has been duly filed in this Honorable Court, praying that the said .....  
.....  
..... be adjudged bankrupt, and an application has been made for the appointment of a receiver to take charge of and



hold the property of the said alleged bankrupt , prior to the adjudication, and pending the hearing upon the said petition.

Now, therefore, the condition of the above obligation is such, That if the said ..... shall in the event of the said petition being dismissed, pay to the said ..... alleged bankrupt or ..... legal representative, all costs, expenses and damages occasioned by such seizure, taking and detention of the property of said alleged bankrupt , then the above obligation to be void, otherwise to be and remain in full force and virtue.

*In presence of*

..... (L. S.)  
The ..... Co.  
By .....  
Manager.  
Attest : .....  
Attorney-in-fact.

[Acknowledgment.]  
[Justification of surety.]

NOTES.

**Act, Sec. 3-e. Cross-References, Secs. 2, (3), (15), 69-a.**

Required where application is made for a receiver to take charge of, and hold the property of the alleged bankrupt or any part thereof, prior to the adjudication and pending a hearing on the petition.

Receiver and marshal take possession of the property for substantially same purpose. Bonds given under 3-e and 69-a construed.

T. E. Hill Co. v. U. S. Fidelity and Guaranty Co. (Ill. Sup. Ct.), 33 Am. B. R. 781; 250 Ill. 242; 95 N. E. 150.

Bond by single surety company sufficient.

In re Sears-Humbert and Co., 10 Am. B. R. 389.

Runs only to respondents at time bond is given.

In re Spalding (C. C. A. 2nd Cir.), 17 Am. B. R. 667; 150 Fed. 120; 80 C. C. A. 74.

The bond should be filed before the receiver takes possession.

In re Haff (C. C. A. 2nd Cir.), 13 Am. B. R. 354; 135 Fed. 742; 68 C. C. A. 340.

In re Sunseri, 18 Am. B. R. 231; 156 Fed. 103.

In re McKane, 18 Am. B. R. 594; 158 Fed. 647.

Compare In re Hines, 16 Am. B. R. 538; 144 Fed. 147.

**Liability of bondsmen upon dismissal of petition.**

In re Smith, 16 Am. B. R. 478; 146 Fed. 923. Selkregg v. Hamilton, 16 Am. B. R. 474; 144 Fed. 557.

In re Nixon, 6 Am. B. R. 693; 110 Fed. 633.

In re Sears-Humbert and Co., 10 Am. B. R. 389.

In re Hines, 16 Am. B. R. 538; 144 Fed. 147.

In re Williams, 9 Am. B. R. 736; 120 Fed. 34. Nixon v. Fidelity and Deposit Co. of Maryland (C. C. A. 9th Cir.), 18 Am. B. R. 174; 150 Fed. 574; 80 C. C. A. 336.

In re Lavoc (C. C. A. 2nd Cir.), 15 Am. B. R. 290; 142 Fed. 960; 74 C. C. A. 130. Hoffschlaeger Co. v. Young Nap, 12 Am. B. R. 526.

To sustain action in State court on bond not necessary that costs and damages be first fixed by Bankruptcy Court.

T. E. Hill Co. v. U. S. Fidelity & Guaranty Co., 33 Am. B. R. 781; 250 Ill. 242; 95 N. E. 150.

Recovery may be had even though taking of property by receiver is not proven to have been wrongful. *s. c. supra.*

Liable only for usual costs unless petitioners acted without probable cause and with malice, when the remedy is a suit in the nature of malicious prosecution.

In re Moehs v. Rechnitzer (D. C. N. Y.), 22 Am. B. R. 286; 174 Fed. 165.

T. E. Hill Co. v. Contractors, etc., Co. (App. Ct. Ill.), 24 Am. B. R. 84.

See, "Collier on Bankruptcy," 10th Ed. p. 983. Compare In re Philadelphia and Lewes Transportation Co., 11 Am. B. R. 444; 127 Fed. 896.

In re Metals Extraction and Refining Co., 27 Am. B. R. 11; 195 Fed. 226.

In re Ward (D. C. N. J.), 29 Am. B. R. 547; 203 Fed. 769.

Counsel fees disallowed.

In re Shon (D. C. Mass.), 32 Am. B. R. 388; 212 Fed. 797.

Alleged bankrupt should file his bill of costs with the clerk and give notice to the creditors.

In re Haeseler-Kohlhoff Carbon Co., 14 Am. B. R. 381; 135 Fed. 867.

No liability on petitioning creditors for trustee's deficit.

In re Metals Extraction and Refining Co., 27 Am. B. R. 11; 195 Fed. 226; 115 C. C. A. 178.

Recovery only against person or persons applying for appointment of receiver and not against the petitioning and intervening creditors generally.

In re Ward (D. C. N. J.), 29 Am. B. R. 547; 203 Fed. 769.

## FORM No. 56.

### PETITION THAT BOND OF PETITIONING CREDITORS BE INCREASED.

United States District Court,

for the ..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Alleged Bankrupt.*

To the District Court of the United States,

for the ..... District of .....

The petition of ..... respectfully shows:

1. That he is the president of ....., a corporation, against which a petition in involuntary bankruptcy was filed herein by ....., ....., and ..... on the ..... day of ....., 19...

2. That on same day, upon the petition of said creditors and the filing of a cost bond by said creditors, ..... was appointed temporary receiver and duly qualified.

3. That the receiver has taken possession of the place of business and all the assets of said ..... Co.

4. That on the ..... day of ....., 19 ..., the said ....., alleged bankrupt, appeared and filed an answer in this proceeding denying its insolvency, denying the acts of bankruptcy charged, or that it should be adjudged bankrupt upon any ground.

5. That the bond filed by the petitioners herein for \$250 is entirely inadequate for the following reasons:

[Here show value of assets, loss of credit, shrinkage of assets, etc., due to filing of petition.]

6. That in view of the above facts and conditions, the ..... Co. should be adequately secured and protected against the action of the petitioning creditors in the appointment of a receiver, in case the petition is dismissed and adjudication refused. That the said bond of the petitioning creditors should be increased to \$. ..... to afford such protection.

No previous application has been made for the relief herein prayed for.

Wherefore your petitioner prays that an order be entered increasing the amount of petitioners' bond to ..... dollars, and in default thereof an order be entered discharging the receiver and directing the return of the property now held by said receiver to the ..... Co., the alleged bankrupt.

.....  
*Petitioner.*

[Verification.]

**FORM No. 57.**

**ORDER DENYING PETITION TO INCREASE BOND.**

At a stated term of the District Court  
of the United States for the .....  
District of ....., held at  
the Court House, City of .....,  
on the ..... day of .....,  
19...

PRESENT:

Hon.....,  
*District Judge.*

IN THE MATTER

OF

No.....

.....  
*Bankrupt.*

A motion having been made herein by ....., the bank-  
rupt, upon petition verified the ..... day of ....., 19...  
that the petitioning creditors' bond should be increased to \$. .... and  
said motion having come on for hearing before this court,

Now upon reading and filing the said petition and notice of motion, and  
the annexed affidavit of ....., duly verified, and after hearing  
..... of counsel for the bankrupt in support of the motion, and  
..... of counsel for the petitioning creditors in opposition  
thereto, and upon motion of ....., attorneys for the petitioning  
creditors, and due deliberation having been had, it is

Ordered that the motion for an order increasing the petitioning creditors'  
bond filed in this court, be and the same is hereby denied.

.....,  
*D. J.*

FORM No. 58.

**PETITION FOR APPOINTMENT OF RECEIVER AFTER ADJUDICATION  
BY REFEREE AND CONSENT OF CREDITORS.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER  OF  .....  <i>Bankrupt.</i>	} No.....

To  
....., Esq.,  
*Referee in Bankruptcy.*

The petition of ..... respectfully shows:  
That he is a creditor of ....., the bankrupt herein, having a  
provable claim for \$.....

That the said bankrupt was duly adjudicated herein, on the ..... day  
of ....., 19..., and on the same day this proceeding was duly  
referred, but that a trustee cannot be appointed for some time to come.

That the bankrupt estate consists of and is worth substantially as follows:  
[Here state full particulars.]

That it is absolutely necessary for the preservation of said estate that a  
temporary receiver be appointed to take charge of the same, for the following  
reasons: .....

[That it will be for the best interests of the creditors of this estate, that  
the business located as above stated, be continued until a trustee can be  
appointed and qualify, for the following reasons:]

That no previous application has been made to this court for the order  
hereinafter asked.

Wherefore, your petitioner prays that a temporary receiver may be appointed  
herein, (with authority to continue said business,) and for such other order  
as shall be just and lawful.

Dated ....., 19...  
.....,  
*Petitioner.*

[Verification.]



CONSENT OF CREDITORS.

We, the undersigned, creditors of said bankrupt, holding unsecured claims in the amounts set opposite our names, do hereby consent to and request the appointment of a temporary receiver herein.

Dated ....., 19...

..... §.....  
 ..... §.....  
 ..... §.....

NOTES.

**Appointment of receiver by referee.**— Not permitted in some jurisdictions including Southern, Northern and Eastern districts of New York except by special order of judge.

By rule XXX in Western District of New York, referees may appoint in voluntary proceedings upon certificate from clerk that judge is absent from the district.

In no case can an appointment be made by referee before order of adjudication and reference.

In re Florcken, 5 Am. B. R. 802; 107 Fed. 241.

Mueller v. Nugent, 7 Am. B. R. 224; 184 U. S. 1; 46 L. Ed. 405.

FORM No. 59.

ORDER APPOINTING RECEIVER AFTER ADJUDICATION.

United States District Court,  
 ..... District of .....:  
 In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No.....
---	---	---------

....., a creditor herein having filed a petition verified the ..... day of ....., 19..., praying for the appointment of a receiver. (and that said receiver be authorized to continue the business in the usual and ordinary manner.) and it appearing that the appointment of a receiver herein is absolutely necessary for the preservation of the estate. (and a majority in amount of creditors having consented thereto,)

Now, on motion of ....., Esq., attorney for said creditor, it is

Ordered, that ..... Esq., of the ..... of ..... in said district, be, and he hereby is, appointed temporary receiver of the estate of said bankrupt, with all the usual powers, and directed to file a bond in the sum of \$. . . . ., with sufficient sureties, to be approved by this court.

(And it is further ordered that said receiver continue the business of said bankrupt, at No. .... Street, in the ..... of ..... in said district.)

[That said receiver have power also to ..... ]

That said receiver continue as such until the appointment and qualification of a trustee herein or further order of this court.

Dated ..... , 19...

*Referee in Bankruptcy.*

**FORM No. 60.**

**BOND OF RECEIVER.**

District Court of the United States,  
..... District of .....

IN THE MATTER  OF  .....  <i>Bankrupt.</i>	}	In Bankruptcy.
--	---	----------------

Know all men by these presents:

That .....  
.....  
.....  
as Principal and the ..... Company, having an office and place of business at No. .... Street, in the City of ..... State of ..... as Surety, are held and firmly bound unto the United States of America in the sum of ..... Dollars, lawful money of the United States, to be paid to the said the United States of America, for which payment, well and truly to be made, the said .....

binds himself, his heirs, executors and administrators, and said .....  
Company binds itself, its successors and assigns, jointly and severally, firmly  
by these presents. Sealed with our seals and dated the ..... day of  
....., in the year .....

Whereas, by an order made by Hon. ...., United States District Judge, dated the ..... day of ....., 19... the said ..... was appointed, with the usual powers, receiver of all the property, assets and effects of ..... bankrupt, until the appointment of a trustee in bankruptcy herein.

Now, therefore, the condition of this obligation is such, that if the said  
 ..... shall faithfully discharge the duties of his trust  
 as such receiver, and shall well and truly account for all moneys and property  
 that shall come into his hands, and shall abide by and perform all things which  
 he in said order is instructed to do, or shall hereafter be by the Court com-  
 manded to perform, then this obligation shall be void; otherwise to be in full  
 force and effect.

*Sealed and delivered  
in presence of*

..... *LS*  
..... Company.  
By .....  
..... *Manager.*  
Attest: .....  
..... *Attorney-in-fact.*

[Acknowledgment and Justification by Surety.]

[Acknowledgment by Principal.]

FORM No. 61.

PETITION FOR ORDER REDUCING AMOUNT OF RECEIVER'S BOND  
AND ORDER THEREON.

United States District Court,  
for the ..... District of .....

<p style="text-align: center;">IN THE MATTER  OF  .....  <i>Bankrupt.</i></p>	}	In Bankruptcy.
---	---	----------------

To the District Court of the United States,  
for the ..... District of .....

The petition of ..... respectfully shows:

- 1. That by an order of this Court dated ..... your petitioner was duly appointed receiver of the above named bankrupt and required to file a bond in the penalty of \$.....
- 2. That petitioner has duly qualified and taken possession of the assets of said bankrupt situated at .....
- 3. That the order appointing your petitioner as such receiver was granted upon the petition of ..... wherein it was stated that the probable value of the assets which would come into the receiver's hands was ..... dollars, while petitioner with the exercise of due diligence has been able to find and take possession of assets of only about the value of \$.....
- 4. That the amount of the yearly premium on petitioner's bond as now filed is the sum of \$....., which is excessive and an unnecessary expense in view of the small amount of property coming into petitioner's hands.

Wherefore petitioner respectfully prays that the amount of his bond be reduced to the sum of \$.....

.....,  
*Petitioner.*

[ Verification. ]

[Order Reducing Amount of Receiver's Bond.]

[Title.]

On reading and filing the annexed petition of ..... verified the ..... day of ....., 191..., and on the order

appointing ..... receiver entered herein, on the ..... day of ....., 191..., and sufficient reason appearing therefor, it is

Ordered, that the said order of ....., 191..., be amended in so far as it requires that the said receiver give a bond in the sum of ..... dollars for the faithful performance of his duties as such receiver by reducing the amount of said bond to the sum of ..... dollars.

Dated ....., 19...

.....,

*D. J.*

**FORM No. 62.**

**PETITION BY RECEIVER TO EMPLOY COUNSEL.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER

OF

No.....

.....  
*Bankrupt.*

To the District Court of the United States,  
for the ..... District of .....:

The petition of ..... respectfully shows:

1. That on the ..... day of ....., 19..., he was duly appointed receiver in bankruptcy of the above named bankrupt and has duly qualified and filed his bond in the penalty required.

2. That in the administration of the estate and in the performance of his duties as receiver, it will be necessary for your petitioner to employ counsel for the purpose of conducting an examination of the bankrupt, relative to moneys alleged to have been paid to creditors by way of preferences and in the discovery of assets, collection of outstanding accounts and for other matters incident to the administration of the estate.

[Here set forth any other reasons.]

3. Your petitioner desires to employ as his counsel ....., the attorney for the petitioning creditors herein, and believes him well qualified to act



as counsel in this matter to your petitioner, and that he represents no interests adverse to petitioner or the estate of the alleged bankrupt.

Wherefore, your petitioner would respectfully pray for an order authorizing and permitting him to retain ..... as his counsel in this proceeding.

.....,  
*Petitioner.*

[Verification.]

**FORM No. 63.**

**AFFIDAVIT OF ATTORNEY THEREON.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER  
OF  
.....  
*Bankrupt.*

STATE OF ..... }  
County of ..... } ss.:

....., being duly sworn, deposes and says:  
That he is an attorney and counselor at law of the State of .....  
and admitted to practice in this court; that he does not represent the above  
bankrupt; and is in no way connected with said bankrupt; that he represents  
no interests adverse to ....., as receiver in bankruptcy of the  
above named estate and knows of no reason why he should not act as the  
attorney and counsel for the said receiver in this proceeding.  
Sworn to before me this ..... day of ....., 19...

**FORM No. 64.**

**ORDER AUTHORIZING RECEIVER TO RETAIN COUNSEL.**

At a stated term of the District Court  
of the United States, held in and for  
the ..... District of .....  
at the United States Court House, City  
of ....., on the .....  
day of ....., 19...

PRESENT:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

.....  
*Bankrupt.*

On reading and filing the annexed petition of .....,  
receiver of the above named bankrupt, verified the ..... day of  
....., 19..., and the affidavit of ..... duly verified,  
and it appearing to the Court that the prayer of the said petition is reasonable  
and proper, it is

Ordered that the said receiver be and he hereby is authorized and em-  
powered to employ ..... as his attorney in this proceeding.

.....,  
*D. J.*

NOTES.

Petition and order to retain counsel necessary under local rules in many districts.  
**See, Rule XX, So. District of N. Y.**

**Rule XXXII, Western District of N. Y.**

Selection of counsel by receiver.

*In re Strobel* (C. C. A. 2nd Cir.), 20 Am. B. R. 22; 160 Fed. 916; 88 C. C. A. 98.

*In re Kelly Dry Goods Co.*, 4 Am. B. R. 528; 102 Fed. 747.

*In re Champion Wagon Co.* (D. C. N. Y.), 28 Am. B. R. 51; 193 Fed. 1004.

Receiver should engage independent counsel.

*In re Kelly Dry Goods Co.*, 4 Am. B. R. 528; 102 Fed. 747.

*In re Zier & Co.* (C. C. A. 7th Cir.), 15 Am. B. R. 646; 142 Fed. 102; 73 C. C. A.

**FORM No. 65.****PETITION BY RECEIVER TO CONTINUE BUSINESS OF BANKRUPT.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

To the District Court of the United States,  
for the ..... District of .....:

The petition of ....., respectfully shows:

That by an order of this court, dated ....., your petitioner was duly appointed receiver herein, and duly qualified by filing the required bond. That on entering upon his duties herein as receiver, your petitioner has taken possession of the property, assets and effects of the bankrupt, consisting of .....

.....  
at ..... Street, .....

That he has made a careful investigation of the condition of the bankrupt's business and finds that said bankrupt has on hand a large number of unfilled orders, from which it is estimated the sum of \$....., could be realized upon completion of same.

That there is also a large stock of material on hand, consisting of .....  
.....  
and largely available for the purpose of completing such orders.

That this property will be greatly enhanced in value by making it up into manufactured goods; otherwise, but a small amount will be realized for the creditors in disposing of the property in its present condition.

Your petitioner believes it to be necessary in the best interests of this estate that he be permitted to carry on the business for a limited period and fill these orders.

(That at the time of the petition in bankruptcy was filed against the said bankrupt, he was endeavoring to effect a settlement with his creditors, and said bankrupt as your petitioner is informed, believes that he can now effect such settlement with his creditors, if the business be continued and the good will preserved.)

Wherefore, your petitioner respectfully prays that he be permitted and empowered to continue the business as conducted by the bankrupt for a period of ..... days, and that in the conduct of the business, he be permitted to incur such expense and enter upon such contracts as in his judgment, may seem proper in the premises.

Dated ....., 19...

*Petitioner.*

[Verification.]

**FORM No. 66.**

**ORDER AUTHORIZING RECEIVER TO CONTINUE BUSINESS OF  
BANKRUPT.**

At a stated term of the United States  
District Court held in and for the...  
District of ....., at the Court  
House in the City of ....., on the  
..... day of ....., 19..

PRESENT:

Hon.....,  
*District Judge.*

IN THE MATTER

OF

*Bankrupt.*

On the annexed petition of ....., receiver herein, verified the ..... day of ....., 19..., and it appearing to me to be in the best interests of the estate, it is hereby,

Ordered that ....., as receiver herein, be and he hereby is permitted, authorized and empowered to continue and carry on the business as conducted by the bankrupt herein, for a period of ..... days, from date hereof, and in the conduct of said business, to make such contracts and incur such expense as in his discretion may be necessary.

*D. J.*

## NOTES.

**Continuance of a going business. Act, Sec. 2, (5), 48-e.**

**Authority.**—Creditors should join in application.

In re Bourlier Cornice and Roofing Co., 13 Am. B. R. 585, 590; 133 Fed. 958.

Receiver may be authorized to borrow money to continue bankrupt's business.

In re Restein, 20 Am. B. R. 832; 162 Fed. 986.

Order authorizing may not be attacked collaterally.

In re Isaacson (C. C. A. 2nd Cir.), 23 Am. B. R. 98; 174 Fed. 406; 98 C. C. A. 614.

Surcharging receiver's accounts for persisting in carrying on an unprofitable business.

In re Consumers Coffee Co., 20 Am. B. R. 835; 162 Fed. 786.

In re Isaacson (*supra*).

Receiver should not carry on a business at expense of secured creditor who does not consent.

In re Bourlier Cornice and Roofing Co. (*supra*).

Duty of persons dealing with receiver running business to investigate extent of receiver's authority.

In re Erie Lumber Co., 17 Am. B. R. 689, 707; 150 Fed. 817.

## FORM No. 67.

## PETITION TO DISCHARGE LIENS.

United States District Court,

..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

To the District Court of the United States,

for the ..... District of .....

The petition of ..... respectfully shows:

1. That by an order of this Court dated ..... petitioner was appointed receiver of the above named bankrupt and duly qualified.

2. That he has taken possession of the assets of said bankrupt and particularly a certain contract for .....

[Here specify substance, property, etc.]

That a large proportion of said contract has been performed and completed by the said bankrupt and it is necessary that same be wholly completed under the terms of said contract to avoid forfeiture.



3. That notices of the following alleged liens have been filed in the office of ..... pursuant to the lien law of the State of .....  
[Names of lienors and amounts.]

4. Petitioner is informed and verily believes that many of said alleged liens are defective and of doubtful legal validity. That it is for the best interest of this estate that your petitioner be authorized and permitted to discharge said liens by deposit of moneys or bond as provided by the lien law of the State so as to complete said contract and release the moneys or payments now tied up thereon.

Wherefore your petitioner prays for an order authorizing and permitting him to discharge the liens as herein enumerated by deposit of moneys or by bond in his discretion and to proceed with the completion of said contract and for such other or further relief as may be just and proper.

.....,  
*Petitioner.*

[Verification.]

### FORM No. 68.

#### ORDER TO DISCHARGE LIENS.

At a stated term of the District Court  
of the United States held in and for the . .  
District of ....., at the Court  
House in the City of ....., on the  
....., day of ....., 19..

PRESENT:

Hon. ....,  
*District Judge.*

IN THE MATTER  
OF

No.....

.....  
*Bankrupt.*

Upon reading and filing the petition of ..... the receiver herein verified ..... and it appearing that the prayer thereof is reasonable and proper, it is on motion of ..... attorneys for the said receiver

Ordered that ..... the receiver herein be and he hereby is authorized and permitted in his discretion to discharge forthwith certain alleged liens against the amount due the bankrupt from ..... under a contract for the construction of ..... notice of which alleged liens have been filed with ..... by ..... and....  
..... in the sums of ..... and ..... by depositing with ..... on behalf of the alleged bankrupt pursuant to provisions of the Lien Law of the State of ..... , such sums of money as may be fixed and directed by ..... (State court) or a justice thereof, to be deposited to discharge such alleged liens or in lieu thereof by filing bond as required by said Lien Law.

.....,  
*District Judge.*

**FORM No. 69.**

**ORDER THAT RECEIVER COMPLETE CONTRACTS.**

At a stated term of the District Court  
of the United States for the.....  
District of ....., held at the Court  
House, City of ....., on the  
....., day of ....., 19..

PRESENT:  
Hon. ....,  
*District Judge.*

IN THE MATTER  
OF  
.....  
*Bankrupt.*

Upon reading and filing the annexed petition of ....., receiver herein, verified the ..... day of ....., 19..., and the annexed consent dated ....., 19..., and on motion of ....., attorney for receiver, it is  
Ordered that said ....., receiver herein, be and he hereby is permitted and allowed to complete the orders which have come into his possession and which are in the course of manufacture or unfilled, and to dispose

of the same when completed, in the regular course of business, for cash, and to make such expenditures in relation thereto as may become necessary.

D. J.

FORM No. 70.

AFFIDAVIT BY RECEIVER FOR LEAVE TO BEGIN SUIT.

United States District Court,  
..... District of .....:  
In Bankruptcy.

IN THE MATTER  
OF  
.....  
*Bankrupt.*

STATE OF ..... }  
County of ..... } ss.:

....., being duly sworn, deposes and says:

1. That on ....., 19..., a petition in involuntary bankruptcy was filed against ..... the bankrupt above named, by....  
..... and others; that on the said ....., 19..., deponent was duly appointed receiver in bankruptcy of the above named bankrupt and required to file a bond in the sum of \$..... and the same was duly filed and approved; that thereafter deponent entered upon his duties as such receiver and is now continuing to act as such.

2. That no adjudication has been had herein; that a considerable period of time must necessarily elapse before a meeting of creditors can be called and a trustee elected herein. That among the assets belonging to the estate herein and in possession of deponent are certain promissory notes for \$....., each made to the order of the said bankrupt by ..... and due ....., 19... That as said promissory notes are due and unpaid, and there is grave danger that same will become uncollectible before a trustee can be elected and qualify herein; that as no trustee can be elected before ....., 19..., deponent believes that it is for the best interests of the estate herein that he be authorized to commence an action on said promissory notes as soon as possible.

3. No previous application has been made for this order.

Sworn to before me this ..... day of ....., 19...

**FORM No. 71.**

**ORDER AUTHORIZING RECEIVER TO BEGIN SUIT.**

At a stated term of the District Court  
of the United States for the.....  
District of ....., held at the Court  
House, City of ....., on the  
....., day of ....., 19..

PRESENT:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

.....  
*Bankrupt.*

On the petition in involuntary bankruptcy herein, subpoena and all the  
proceedings herein, and on reading and filing the affidavit of .....,  
receiver in bankruptcy of ....., bankrupt, verified.....,  
19..., and on motion of ....., attorney for the said receiver,  
and sufficient reason appearing therefor, it is, upon motion of .....,  
attorney for said receiver,

Ordered that ....., receiver of the bankrupt herein, be  
and he is hereby authorized, empowered and directed to commence an action  
against ..... upon the following cause of action: .....

.....,  
*D. J.*

NOTES.

**Suits by receiver.**—Little used, as a receiver in bankruptcy is a mere custodian.  
Court, however, has power to authorize receiver to institute all necessary actions at  
law or suits in equity for the recovery or preservation of the alleged bankrupt's prop-  
erty. *In re Fixen*, 2 Am. B. R. 822; 96 Fed. 748.

May maintain summary proceedings.

*In re Muncie Pulp Co.* (C. C. A. 2d Cir.), 14 Am. B. R. 70; 139 Fed. 546.

Or replevin.

*Unrnach v. Douglass*, 75 Conn. 633.

Cannot sue in another district.

In re National Mercantile Agency, 12 Am. B. R. 189; 128 Fed. 639.

In re Schrom, 3 Am. B. R. 352; 97 Fed. 760.

A temporary receiver in bankruptcy has no authority to bring an action to set aside an alleged fraudulent transfer by the bankrupt.

Guarantee Title and Trust Co. v. Pearlman, 16 Am. B. R. 461; 144 Fed. 550.

Frost et al. v. Latham & Co. et al., 25 Am. B. R. 313.

Nor for recovery of property not in his possession.

Boonville Nat. Bank v. Blakey (C. C. A. 7th Cir.), 6 Am. B. R. 13; 107 Fed. 891;

47 C. C. A. 43.

*Contra.* In re Fixen (D. C. Cal.), 2 Am. B. R. 822; 96 Fed. 748.

Validity of an order authorizing suit by receiver cannot be collaterally attacked.

Slaughter v. Louisville & Nashville R. R. Co. (Tenn. Sup. Ct.), 27 Am. B. R. 570;

125 Tenn. 292.

But not conclusive as to right of action.

Greenhall v. Hurwitz et al., 31 Am. B. R. 871; 80 Misc. (N. Y.) 186.

## FORM No. 72.

### ORDER AUTHORIZING RECEIVER TO JOIN IN BANKRUPTCY PETITION.

At a stated term of the District Court  
of the United States for the.....  
District of ....., held at the Court  
House, City of ....., on the  
..... day of ....., 19..

PRESENT:

Hon. ....,

*District Judge.*

IN THE MATTER

OF

.....  
*Bankrupt.*

On reading and filing the annexed petition of ..... receiver herein, verified the ..... day of ....., 19..., and sufficient reason appearing to me therefor,

Now, on motion of ....., attorney for ....., receiver of ....., it is

Ordered that the said ..... as receiver of ..... be and he hereby is authorized and allowed to join with the said .....



the bankrupt herein, in proceedings and petition to have .....  
adjudged an involuntary bankrupt and for such action or proceedings as may  
be necessary and proper thereto.

.....,  
*D. J.*

**FORM No. 73.**

**ORDER ALLOWING SUIT AGAINST RECEIVER.**

At a stated term of the District Court  
of the United States for the.....  
District of ....., held at the United  
States Court House in the City of.....,  
on the ..... day of ....., 19..

PRESENT:  
Hon. ....,  
*District Judge.*

IN THE MATTER  
OF  
.....  
*Bankrupt.*

On reading and filing the petition of ....., dated and verified  
....., ....., 19..., and on motion of ....., attorney  
for the petitioner, and sufficient reason appearing therefor, it is

Ordered, that the prayer of said petitioner be and the same hereby is  
granted, and that said petitioner have leave to commence an action in the  
..... Court of ..... in the manner and form as he may  
be advised, for: [Here state object of action,] and that petitioner have leave  
to make ..... as receiver of the estate of the above named....  
....., bankrupt, a party defendant in said action.

.....,  
*D. J.*

**NOTES.**

**Actions against receiver.**—A receiver as such may not be sued except by leave of  
court, unless he is carrying on the business by order of court.

In re Kalb & Berger Mfg. Co. (C. C. A. 2nd Cir.), 21 Am. B. R. 393; 165 Fed. 895;  
91 C. C. A. 573.

None on claims against alleged bankrupt.

In re Heim Milk Product Co., 25 Am. B. R. 746; 183 Fed. 787.

**Jurisdiction.**—An action may be maintained against receiver for goods sold to him during receivership, in the City Court of New York

Orr Co. v. Cushman, 18 Am. B. R. 535.

Receiver not personally liable for negligence of agent in removing property which he was authorized to remove where the receiver was not guilty of negligence in the selection of such agent.

Frederick A. Stokes Co. v. Carell, 138 N. Y. Supp. 536.

Not necessary to obtain leave to sue receiver on a claim for goods removed during receivership.

In re Kelly Dry Goods Co., 4 Am. B. R. 528; 102 Fed. 747.

Stays in action against receiver personally; no power though based on acts done as receiver.

In re Kalb & Berger Mfg. Co. (C. C. A. 2nd Cir.), (*supra*).

In re Kanter and Cohen (C. C. A. 2nd Cir.), 9 Am. B. R. 372; 121 Fed. 984; 58 C. C. A. 260.

In re Spitzer (C. C. A. 2nd Cir.), 12 Am. B. R. 346; 130 Fed. 879; 66 C. C. A. 35.

In re Trayna and Cohn (C. C. A. 2d Cir.), 27 Am. B. R. 594; 195 Fed. 486; 115 C. C. A. 396.

Will not restrain an action against a receiver *in personam* as for a tort where acts complained of were outside the scope of his authority.

In re Spechler Bros. (D. C. N. Y.), 26 Am. B. R. 97; 185 Fed. 311.

Compare Riverdale Mills v. Alabama and G. Mfg. Co., 198 U. S. 188; 49 L. Ed. 1008.

See, as bearing upon right to such stay, Murphy, 2d v. John Hofman Co. (U. S. Sup.), 21 Am. B. R. 487; 211 U. S. 562; 53 L. Ed. 327; rev'g 187 N. Y. 548.

### FORM No. 74.

#### ORDER DIRECTING DELIVERY OF ASSETS BY RECEIVER TO TRUSTEE SUBJECT TO LIEN FOR FEES, ETC.

At a stated term of the District Court  
of the United States for the .....  
..... District of .....  
held at the Court House, City of .....  
....., on the ..... day of  
....., 19...

PRESENT:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

.....  
*Bankrupt.*

On reading and filing the annexed affidavit of ..... attorney  
for ....., receiver of the estate of the above named

bankrupt, verified ....., 19..., and due notice of this application having been given to ..... the trustee herein,

Now on motion of ....., attorney for receiver, it is

Ordered that the said receiver be and he is hereby authorized and directed to turn over to the trustee of the estate of the above named bankrupt all the assets belonging to the estate herein now situated at ....., in the City of .....

And it is further ordered, that ....., the said trustee, hold all the said property, when the same shall have been turned over to him by the said receiver, subject to the payment of all indebtedness incurred by the receiver in carrying on the business of the bankrupt and also to the payment of the allowance of the receiver and his expenses of administration and the allowance of his attorney, the amount of such allowances and expenses of administration to be fixed and determined hereafter by this court.

D. J.

NOTES.

Receiver may be compelled to turn over to the trustee when qualified the moneys or other property in his hands without waiting for his accounts to be passed, save such amount as will suffice to cover probable expenses of the receivership.

In re College Clothes Shop (D. C. N. Y.), 27 Am. B. R. 10; 192 Fed. 80.

FORM No. 75.

REPORT OF RECEIVER.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER	} No. ....
OF	
..... <i>Bankrupt.</i>	

To the United States District Court,  
for the ..... District of .....

I, ....., do hereby make and file my report and account as temporary receiver of the estate of the above named bankrupt:

1. I was appointed receiver herein on the ..... day of ..... 19..., and required to file a bond in the penalty of .....

(\$.....). Having been notified of my appointment, I obtained a certified copy of the order thereof, and filed my bond in the penalty required, and in company with the attorney for the petitioning creditors, I visited the premises of the bankrupt, No. .... Street, ..... I there met and interviewed ....., the secretary of the company, and others. Subsequently other officers of the alleged bankrupt arrived at the premises, and after consultation with attorney, turned over the premises to me. I placed a custodian in charge of the premises and took possession of the books, etc., I found that the bankrupt was a ..... corporation, engaged in the manufacture and sale of ..... I had a long consultation with the officers of the company and with various large creditors, in regard to the advisability of continuing the business, inasmuch as the company had on hand orders to be executed, amounting to about \$....., and a large supply of material. I also learned that the company had been accustomed to obtain advances upon all its invoices and that almost all of the accounts due the company had been assigned for these advances. That upwards of \$..... of book accounts had been so assigned and no estimate could be then formed as to what, if any, equity the alleged bankrupt might have in said accounts.

I finally decided that it would be of advantage to the estate to apply for an order authorizing me as receiver to continue the business for a period of twenty days, with leave to apply for a further extension, if desirable. I directed the custodian to take an inventory of all the property and sent all of the outstanding insurance policies to the various companies for transfer of interest.

2. On ....., 19..., I obtained an order allowing me to continue the business for a period of ..... days. I called an informal meeting of the creditors to meet at the bankrupt's premises, attended at the said meeting and remained in consultation with the attorneys and creditors for a considerable period. Also had consultations with the attorneys for the bankrupt company and ....., attorneys for creditors. I made a careful examination of the stock on hand and of the books, employed an expert accountant and obtained a general idea of the condition of the business. Revised and reduced the payroll as much as possible. I made arrangements with a number of supply houses to sell goods on credit and had various interviews with credit men.

[Insert any additional or special allegations as to services, etc.]

On ....., 19..., I obtained the consents of creditors representing a majority in amount of claims, for an order extending my time to run the business for an additional twenty days, inasmuch as there were a large number of unfilled orders yet on hand and an order was signed to that effect. Subsequently I verified a petition for the appointment of appraisers and for a sale. On ....., 19..., an informal meeting of creditors

was held on the bankrupt's premises, for which I prepared a detailed statement of the general condition of the business.

That in carrying on the business of the bankrupt company it was necessary for me to devote a large amount of time to the details of the said business and to visit the premises of the bankrupt frequently. That I employed about ..... persons, including the factory, office and sales departments and the weekly payroll averaged \$...... to \$...... That at the time I commenced to carry on the business, there were about \$...... in orders on hand and I subsequently obtained about \$...... additional orders. That as receiver I purchased merchandise and supplies, amounting to about \$......, as shown in Schedule B, hereto annexed.

I, manufactured, filled and shipped all of the orders above mentioned, which were deemed profitable to fill. Annexed hereto is my verified account as receiver, showing receipts and disbursements in the conduct of the business. The merchandise and plant were sold at public auction pursuant to order of this court.

I have received no compensation for my services as receiver and in conducting the business of the bankrupt under the order of this court and I hereby state my statutory compensation at the sum of \$......

Wherefore, I respectfully pray that my said account be passed as filed, that suitable allowances be made to ....., my attorneys and to the duly appointed appraisers and compensation by way of commission to myself as receiver, and for carrying on the business of said bankrupt, and that I be discharged as receiver herein.

All of which is respectfully submitted.

Dated ....., 19...

.....,

*Receiver.*



FORM No. 76.

RECEIVER'S ACCOUNT AND OATH TO SAME.

United States District Court,  
..... District of .....:  
In Bankruptcy.

IN THE MATTER	}	No.....
OF		
..... <i>Bankrupt.</i>		

Account of ....., Receiver.

RECEIPTS.

I charge myself as follows:

19.....		
.....	.....	\$.....
.....	.....	.....
.....	.....	.....
Total receipts .....		\$.....

DISBURSEMENTS.

I credit myself as follows:

19.....		
.....	.....	\$.....
.....	.....	.....
.....	.....	.....
Total disbursements .....		\$.....

SUMMARY STATEMENT.

Total receipts .....	\$.....
Total disbursements .....	.....
<hr/>	
Balance in hands of Receiver .....	\$.....
Dated ....., 19...	
..... <i>Receiver.</i>	

United States District Court,

..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

On the ..... day of ....., 19..., before me comes.....  
....., and makes oath and says he was on the ..... day of  
....., 19..., appointed receiver of the estate and effects of the  
above named bankrupt; that as such receiver he has conducted the adminis-  
tration of the estate; that the account hereto annexed, containing .....  
sheets of paper, subscribed by him is true, and such account contains entries  
of every sum of money received by the said receiver on account of the estate  
of the above named bankrupt, and that the payments purporting in such  
account to have been made by such receiver, have been so made by him, and  
he asks to be allowed for such payments and expenses as charged in said  
account.

.....  
Subscribed and sworn to before me at the City of ....., in the  
..... District of ....., this ..... day of ....., 19...  
[Annex vouchers for all payments.]

#### NOTES.

See, Act, Secs. 48 (d) and (e), 2, (5), 72, as amended 1910. See, also, Rules  
XXI and Instructions to Referees 8, for Southern District of New York.

See Rules XXX and XXXI, Western District of New York.

A receiver will be allowed appraisers' fees paid by him, although trustee dissatisfied  
therewith has a new appraisal made.

In re Kyte, 19 Am. B. R. 768; 158 Fed. 121.

Insurance premiums allowed. In re Kyte (*supra*).

#### Surcharging account.

Account should not be surcharged with losses on sales during continuance of busi-  
ness under order.

In re Isaacson (C. C. A. 2nd Cir.), 23 Am. B. R. 98; 174 Fed. 406; 98 C. C. A. 614.

In re Schoenfeld et al. (C. C. A. 3rd Cir.), 25 Am. B. R. 748; 183 Fed. 219; 105  
C. C. A. 481.

#### Compensation of receiver.

Sec. 48-d construed.

In re Ginsburg, 31 Am. B. R. 240; 208 Fed. 160.

In re Metropolitan Motor Car Co. (D. C. Wash.), 35 Am. B. R. 539; 225 Fed. 274.  
 In re Chas. Knosher & Co. (C. C. A. 9th Cir.), 28 Am. B. R. 747; 197 Fed. 136;  
 116 C. C. A. 560.

In re Falkenberg, 30 Am. B. R. 718; 206 Fed. 835.

When denied compensation.

In re Desrochers (D. C. N. Y.), 25 Am. B. R. 703; 183 Fed. 991.

In re Schoenfeld et al. (C. C. A. 3rd Cir.), (*supra*).

In re Oshwitz & Feldstein (D. C. N. Y.), 25 Am. B. R. 594; 183 Fed. 990.

In re Tisch, 29 Am. B. R. 339; 202 Fed. 1018.

#### Compensation of receivers prior to amendment of 1910.

In re Sully, 13 Am. B. R. 22; 133 Fed. 997.

In re Adams Sartorial Co., 4 Am. B. R. 107; 101 Fed. 215.

In re Kelly Dry Goods Co., 4 Am. B. R. 528; 102 Fed. 747

In re Scott, 3 Am. B. R. 625; 99 Fed. 607.

In re T. E. Hill Co. (Bither v. Coleman) (C. C. A. 7th Cir.), 20 Am. B. R. 73; 159 Fed. 73; 86 C. C. A. 263.

*Contra.* In re Cambridge Lumber Co., 14 Am. B. R. 168; 136 Fed. 983.

In re Richards (D. C. Mass.), 11 Am. B. R. 581; 127 Fed. 77.

See In re Mammoth Pine Lumber Co., 8 Am. B. R. 651; 116 Fed. 731.

Dunlap Hardware Co. v. Huddleston (C. C. A. 5th Cir.), 21 Am. B. R. 731; 167 Fed. 433; 93 C. C. A. 69.

Compensation for continuing bankrupt's business.

In re Kirkpatrick (C. C. A. 6th Cir.), 17 Am. B. R. 594; 148 Fed. 811; 78 C. C. A. 501; In re Borgenson Co., 18 Am. B. R. 178; 151 Fed. 780; In re Sully (D. C. N. Y.), (*supra*).

See *contra* In re Cambridge Lumber Co. (D. C. Mass.), (*supra*); In re Richards (D. C. Mass.) (*supra*).

Petitioning creditors may be charged upon dismissal of an involuntary petition with receiver's fees, costs and expenses.

In re Lavoe (C. C. A. 2d Cir.), 15 Am. B. R. 290; 142 Fed. 960; 74 C. C. A. 130; Beach v. Macon Grocery Co. (C. C. A. 5th Cir.), 8 Am. B. R. 751; 116 Fed. 143; 53 C. C. A. 463.

In re T. E. Hill Co. (C. C. A. 7th Cir.), 20 Am. B. R. 73; 159 Fed. 73; 86 C. C. A. 263.

In re Chas. W. Aschenbach Co. (C. C. A. 2d Cir.), 25 Am. B. R. 502; 183 Fed. 305; 105 C. C. A. 517.

Compensation of, when petition has been dismissed.

Authority to compensate passed to court making the adjudication.

In re Sears Humbert and Co., 10 Am. B. R. 389.

When proceeding is removed to another district, the court originally appointing the receiver should fix his compensation.

In re Isaacson (C. C. A. 2d Cir.), 23 Am. B. R. 98; 174 Fed. 406; 98 C. C. A. 614.

Upon dismissal of petition.

Payment of expenses incurred by a receiver appointed by District Court will not be directed to be paid out of the property of the corporation coming into his hands in the absence of evidence showing that such appointment was "absolutely necessary for the preservation of the estate."

In re Wentworth Lunch Co. (C. C. A. 2d Cir.), 27 Am. B. R. 515; 191 Fed. 821; 112 C. C. A. 335; *rev'g*, s. e. 25 Am. B. R. 612; 189 Fed. 831.

When notice of hearing to fix allowances is not defective.

In re Franklin Sugar Refining Co. (C. C. A. 2d Cir.), 31 Am. B. R. 709; 210 Fed. 24; 126 C. C. A. 604.

FORM No. 77.

NOTICE OF HEARING UPON RECEIVER'S ACCOUNTS BEFORE MASTER.

United States District Court,  
..... District of .....:  
In Bankruptcy.

IN THE MATTER  
OF  
.....  
*Bankrupt.*

SIR:

Please to take notice that the report and account of ....., receiver herein, and the application for an allowance of ....., attorneys for the receiver, and of ....., attorney for the petitioning creditors, and of the appraisers herein, were this day duly filed in the office of the clerk of this court, and have been duly referred to ....., as Special Master (or Referee), for examination, testimony and report, and that a hearing will be had thereon before ....., as such Special Master (or Referee), at his office, ....., in the City of ..... on the ..... day of ....., 19..., at ..... o'clock in the ..... noon of that day, or as soon thereafter as counsel can be heard.

Yours, etc.,

Dated ....., 19...

.....,  
*Attorneys for Receiver.*  
No. ....  
City of .....

To  
....., Esq.,  
*Trustee.*

FORM No. 78.

EXCEPTIONS TO RECEIVER'S ACCOUNT.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No.....
---	---	---------

....., trustee in bankruptcy herein, appearing by  
....., his attorney, and objecting to the account filed  
by ....., receiver herein, files the following exceptions thereto:

1. (Set forth objections specifically.)

2. ....

Wherefore the trustee herein respectfully prays that the account of said  
....., receiver, be not allowed as to the matters above set  
forth and that said receiver be directed to account for and turn over to the  
trustee the following: .....

Dated ....., 19...

.....,  
*Trustee.*

[Verification.]

NOTES.

**Exceptions to receiver's account.**

Referee has no authority to find against receiver on ground not specified in excep-  
tions and of which receiver had no notice, nor to surcharge his account on such ground

In re Schoenfeld (C. C. A. 3d Cir.), 25 Am. B. R. 748; 183 Fed. 219; 105 C.  
C. A. 481.

Objections should be made promptly.

Re-examination not allowed where there has been laches.

In re Reliance Storage and Warehouse Co., 4 Am. B. R. 49; 100 Fed. 619.

Exceptions to account should be verified.

In re Ketterer Mfg. Co., 19 Am. B. R. 646; 155 Fed. 987.



**FORM No. 79.****PETITION FOR ALLOWANCE BY ATTORNEY FOR RECEIVER.**

United States District Court,

for the ..... District of .....:

In Bankruptcy.

IN THE MATTER

OF

No.....

.....  
*Bankrupt.*

To the United States District Court,

for the ..... District of .....:

The petition of ..... respectfully shows:

1. That he is an attorney at law and admitted to practice in this court; that on the ..... day of ....., 19..., your petitioner was retained by ....., Esq., receiver of the estate of the above named bankrupt, as his counsel, and on the ..... day of ....., 19..., an order was duly made and entered herein to that effect.

2. That the said bankrupt was engaged in business at ..... as follows: .....

3. That petitioner has rendered the following services for the receiver herein:

[Here set forth specifically and at length all services performed for receiver and for the benefit of the estate.]

4. Your petitioner has actually paid necessary expenses and disbursements on behalf of this estate, amounting to \$....., as follows: ..... [Itemize or annex schedule.] That same has not been repaid to petitioner.

5. That petitioner has received no compensation for the services hereinbefore stated to have been rendered by him as attorney for the said receiver. (That annexed hereto is a transcript of petitioner's register, marked Schedule "A," showing in detail the services as hereinbefore specified.)

Wherefore, your petitioner respectfully prays, that a suitable allowance be made to him for his services as attorney for the receiver herein and in addition thereto the sum of \$..... disbursements actually paid as such attorney.

.....  
*Petitioner.*

[Verification.]

NOTES.

**Compensation of Attorney for Receiver.**

See Rules XXII and of Instructions to Referees 8, Southern District of New York. Rule XXXI, Western District of New York.

Allowed compensation for services rendered in behalf of estate or for its benefit.

In re T. E. Hill Co. (C. C. A. 7th Cir.), 20 Am. B. R. 73; 159 Fed. 73; 86 C. C. A.

263.

In re Ketterer Mfg. Co., 19 Am. B. R. 646; 155 Fed. 987.

No allowance for services in interest of petitioning creditors, who are his clients.

In re Oppenheimer, 17 Am. B. R. 59; 146 Fed. 140.

**FORM No. 80.**

**REPORT OF SPECIAL MASTER ON RECEIVER'S ACCOUNT.**

United States District Court,

for the ..... District of .....

IN THE MATTER

OF

} In Bankruptcy No. ....

.....  
*Bankrupt.*

To the Honorable,.....

Judge of the above named Court:

I, ....., one of the Referees in Bankruptcy, to whom, as Special Master, have been referred the report and account of ....., as receiver herein, together with the application of the said receiver for an allowance in payment of his services and disbursements as such; and also the application of ....., for an allowance in payment of his services and disbursements as attorney for the said receiver; and also the application of ....., and ..... for an allowance for their services as appraisers appointed by the court to appraise the estate of the bankrupt in the hands of the said receiver, due notice having been given to the creditors herein as required by the rule of this court, having been duly attended by the parties and creditors and having heard and considered the allegations and proofs, do hereby respectfully report as follows:

I was duly attended, upon the hearings herein, by ....., the said receiver and by ....., his attorney, by ....., the duly appointed trustee in bankruptcy herein and certain creditors. No objections were made or filed to the account of the said receiver.

I have carefully examined the said report and account, together with the vouchers submitted in support thereof, and find the same in all respects correct and true, and recommend that same be passed and allowed as filed.

The petition was filed herein on the ..... day of ....., 19... The bankrupt was adjudicated on the ..... day of ....., 19... The said temporary receiver was duly appointed ....., 19..., and immediately qualified and took possession of the bankrupt's property and effects. .... was appointed trustee ....., 19...

The bankrupt was engaged in business as a ..... and had ..... places of business, one at ....., and another at ..... both in the City of ..... The receiver, pursuant to order of the court, sold all the property of the bankrupt found in the stores mentioned at public auction. The gross amount realized from this sale was \$. .... From this the auctioneer deducted, for his services and disbursements, the sum of \$. ...., leaving as the net result of the sale, \$. .... This is all that the estate has as yet recovered, although it appears that the receiver and his attorneys believe that further sums may be recoverable.

A summary account of the receiver's cash is as follows: He has received in all the sum of ..... \$. .... and he has disbursed in all the sum of ..... \$. ...., leaving a balance in his hands of ..... \$. ....

I think that the receiver discharged all the duties required of him as such in a satisfactory manner. His attorney also acted with diligence in the discharge of the duties required of him. Much of the services shown by the receiver's attorney consists of examination of the bankrupt and others, for the purpose of discovering assets and obtaining evidence upon which to base proceedings for the recovery of property believed to have been wrongfully taken from the estate. These services seem to have been rendered with diligence.

I, therefore respectfully recommend that the said receiver make the following disposition of the funds in his hands:

1. That he shall retain in full compensation by way of commission for his services as receiver as aforesaid, the sum of ..... \$. ...., and in addition thereto, the sum of ..... \$. .... for disbursements, in all the sum of ..... \$. ....

2. That he shall pay to ....., for his services as attorney for the said receiver, the sum of ..... \$. ...., and in addition thereto the sum of ..... \$. .... for his disbursements, making in all the sum of ..... \$. ....

3. That he pay to each of the appraisers herein, the sum of \$..... in full compensation for services as such, making in all .....\$.....

4. That he shall pay to the undersigned, Special Master, in full compensation for his services and disbursements in this proceeding, the sum of .....\$....., and that having made the aforesaid payments, he shall pay over the amount then remaining in his hands to ....., as trustee in bankruptcy herein, and that upon making such payments, the said ..... be discharged as such receiver, and his bond cancelled.

All of which is respectfully submitted.

Dated ....., 19...

.....  
Special Master,  
(or Referee.)

FORM No. 81.

**NOTICE OF MOTION TO CONFIRM REPORT OF SPECIAL MASTER ON RECEIVER'S ACCOUNT.**

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER  
OF

No.....

.....  
Bankrupt.

SIR:

You will please take notice, that upon the receiver's report, account, exceptions thereto and all the proceedings had herein, and upon the report of ....., Esq., Special Master (or Referee), dated the ..... day of ....., 19..., the undersigned will respectfully move this court at a stated term thereof to be held in the Federal Court House, City of....., on the ..... day of ....., 19..., at ..... o'clock ..... M., of said day, or as soon thereafter as counsel can be heard, for an order in all respects confirming the report of ....., Esq., Special Master (or Referee), passing and allowing the receiver's accounts herein, overruling the exceptions thereto and fixing the compensation for

services of the receiver, his counsel, the counsel for the petitioning creditors and the appraisers, and for such other and further relief as may be just and proper.

Dated ..... , 19...  
Yours, etc.,  
.....,  
*Attorneys for Receiver,*  
Office and P. O. Address,  
.....  
..... St.,  
.....

To  
....., Esq.,  
*Trustee,*  
.....  
.....

**FORM No. 82.**

**ORDER CONFIRMING REPORT OF SPECIAL MASTER ON RECEIVER'S ACCOUNT.**

At a stated term of the District Court  
of the United States for the .....  
District of ....., held at the  
Court House, City of ....., on the  
..... day of ....., 19...

PRESENT:  
Hon. ....,  
*District Judge.*

IN THE MATTER	} No.....
OF	
..... <i>Bankrupt.</i>	

..... receiver of the above named bankrupt, having presented his account and vouchers in support thereof, and having moved to confirm his report and that compensation be allowed to the said receiver and



to his counsel for their services, and to the attorneys for the petitioning creditors, etc., and the said matters having been referred to ..... Esq., as Special Master, and the said Special Master having filed his report thereon, dated ..... day of ....., 19....,

Now after hearing ....., Esq., of counsel for the receiver, in support of said application, and due deliberation having been had thereon, upon reading and filing the report of the said Special Master, the account and report of ....., receiver herein, it is

Ordered:— That the report of ....., Esq., Special Master (or Referee) appointed herein, be, and the same hereby is in all respects confirmed and approved,

And it is further ordered:— That the account of ....., receiver of the property, assets and effects of ..... bankrupt above named, be, and the same hereby is in all things allowed, approved and confirmed.

And it is further ordered:— That ....., receiver herein, be, and he hereby is, allowed for his services by way of commissions, the sum of \$..... and that the disbursements incurred by him in the administration and preservation of the estate and heretofore deducted by him, be and the same hereby are allowed.

And it is further ordered:— That ....., receiver herein, pay to ..... the sum of \$..... as and for an allowance to them as attorneys for the receiver herein and the further sum of \$..... disbursements incurred and expended on behalf of the receiver in the administration and preservation of the estate herein, and amounting in the aggregate to the sum of \$.....

And it is further ordered:— That ....., receiver herein, pay to ....., and ....., the sum of \$..... each for services rendered by them as appraisers herein.

And it is further ordered, that ....., receiver herein, pay to ....., Esq., the Special Master herein, the sum of \$..... for his services and disbursements on this accounting.

And it is further ordered:— That ....., receiver herein, after making the payments as herein directed, pay the balance remaining in his hands to ....., trustee in bankruptcy herein.

And it is further ordered:— That upon making such payments ....., receiver herein, be discharged as receiver of the property, assets and effects of the above named bankrupt, and that the bond given by him for the faithful performance of his duties be directed to be cancelled and discharged. (And that the bond given by the petitioning creditor upon whose application the receiver was appointed herein under Section 3, subdivision c of the Bankruptcy Act, be cancelled and annulled, and the sureties thereon exonerated from any and all liability thereunder.)

.....  
D. J.

## NOTES.

Adjudication as to receiver's accounts not a bar to suit against third person to recover property. *Whitney, Trustee v. Wenman et al.*, 14 Am. B. R. 591; 140 Fed. 959.

Punishing for contempt.

*In re Reliable Bottle Box Co.*, 29 Am. B. R. 371; 199 Fed. 670.

## FORM No. 83.

**ORDER CONFIRMING REPORT OF MASTER AND DIRECTING PAYMENT BY PETITIONING CREDITORS UPON DISMISSAL OF INVOLUNTARY PETITION.**

At a stated term of the District Court  
of the United States for the .....  
District of ....., held at the  
Court House, City of ....., on the  
..... day of ..... 19...

## PRESENT:

Hon. ....,

*District Judge.*

IN THE MATTER

OF

.....

*Bankrupt.*

The motion to confirm the report of ..... Esq., special master, filed herein ....., 19..., and for other and further relief coming duly on to be heard on the order of Hon. .... made in the above entitled proceedings referring the matters of the report and petition of ....., receiver, and the petition of ..... his attorneys both filed ....., 19..., to said ....., Esq., as special master and the said report and on all the papers and proceedings herein, and on reading and filing notice of this motion and proof of due service thereof, after hearing ....., Esq., attorney for the receiver, and ....., Esq., attorney for the petitioning creditors in opposition thereto,

Now, on motion of ....., attorney for ....., receiver, it is

Ordered, that the said motion be and the same hereby is granted and that the acts, deeds and disbursements of said ..... as receiver in this

proceeding be and the same hereby are passed, allowed and in all respects confirmed; and

It is further ordered, that the petitioning creditors herein, namely....., ..... and ..... pay within ten days from service of a copy of this order upon their attorney the following sums, to wit:

1. To ..... Esq., receiver or his attorneys, the sum of ..... dollars hereby allowed and awarded to him for his services, disbursements and expenses incurred as such receiver.

2. To ..... Esq., attorney for said receiver, the sum of ..... dollars and ..... cents, hereby allowed and awarded to him for services and disbursements as such attorney.

3. To ..... special master, the sum of ..... dollars hereby allowed and awarded to him for services and expenses incurred as such special master including stenographer's bill for minutes.

It is further ordered, that said receiver, ....., Esq., be released and discharged of and from all liability and accountability as such receiver, and in respect to his acts and doings as such receiver, and that the bond given by him as such receiver for the faithful performance of his duty as receiver and filed with the Clerk of this Court be discharged and cancelled.

.....,  
U. S. D. J.

### FORM No. 84.

#### ORDER VACATING APPOINTMENT OF RECEIVER.

At a stated term of the District Court  
of the United States for the .....  
District of ....., held at the  
Court House, City of ....., on the  
..... day of ..... 19...

PRESENT:

Hon. ....,  
*District Judge.*

IN THE MATTER
OF
.....
<i>Bankrupt.</i>

Application having been made on behalf of ..... a creditor of the above named ....., for an order vacating, annulling and

setting aside the order made herein by the Hon. . . . ., District Judge, bearing date the . . . . . day of . . . . ., 19 . . ., appointing . . . . ., receiver of the goods, wares, merchandise, etc., of . . . . ., bankrupt, and containing further provisions as will more fully appear by reference to the said original order on file in this court; and said application having come on for hearing, upon the papers and proceedings herein and upon due notice given to the said . . . . ., the receiver so appointed, and to . . . . ., Esq., the attorney for the above named petitioning creditors herein,

Now, upon reading and filing the petition of . . . . . duly verified, and the affidavit of . . . . . duly verified, and after hearing . . . . ., of counsel for said . . . . . in support of said application, and . . . . ., the said receiver, and . . . . ., the attorney for the above named petitioning creditors, in opposition thereto; and it appearing from the pleadings and proceedings herein that the . . . . . is a corporation engaged in the business of . . . . ., and is not such a corporation as is amenable to the Bankruptcy Act as amended; and due deliberation having been had,

Now on motion of . . . . ., attorneys for said . . . . ., it is

Ordered, that said motion be and the same hereby is granted, and the said order made by the Hon. . . . ., District Judge, bearing date the . . . . . day of . . . . ., 19 . . ., appointing the said . . . . ., receiver of said . . . . . and containing other provisions, be and the same is hereby vacated and set aside.

. . . . .,

*D. J.*

#### NOTES.

##### **Vacating Receivership.**

Discretionary with Court.

In re Church Construction Co. (D. C. N. Y.), 19 Am. B. R. 549; 157 Fed. 298.

In re Oshwitz and Feldstein (D. C. N. Y.), 25 Am. B. R. 594; 183 Fed. 990.

Property in hands of assignee for benefit of creditors.

In re Oakland Lumber Co. (C. C. A. 2nd Cir.), 23 Am. B. R. 181; 174 Fed. 634; 98 C. C. A. 388.

Motion to vacate.

In re Haff (C. C. A. 2nd Cir.), 13 Am. B. R. 354; 135 Fed. 742; 68 C. C. A. 380.

Effect of dismissal.

Receiver must restore property intact without any deductions for services or disbursements, or those of attorney.

In re Sears, Humbert and Co., 10 Am. B. R. 389.

## FORM No. 85.

**PETITION FOR AUTHORITY TO ISSUE RECEIVER'S CERTIFICATES.**

United States District Court,

..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

To the District Court of the United States,

for the ..... District of .....

The petition of ..... respectfully shows and alleges:

1. That on the ..... day of ....., 19..., your petitioner was duly appointed receiver of ....., the bankrupt herein, duly qualified and is still acting as such receiver.

2. That by the order of his appointment, he was authorized to continue the business of said bankrupt for a period of ..... days and an order has been made extending such time for a further period of ..... days.

3. In accordance therewith petitioner has conducted the business of the bankrupt from date of his appointment to the present time.

4. That the principal business of the bankrupt at present is a contract for the construction of ..... in the City of ..... and is of a public nature and not yet completed.

5. That under the contract aforesaid, \$..... is now due as a payment for work done but same cannot be immediately collected.

6. Petitioner further shows that he will necessarily require \$..... over and above the amount of cash on hand to meet the liabilities incurred by him in the conduct of the business requiring immediate payment and to meet weekly payrolls, and other future expenditures.

7. Petitioner is informed and verily believes, he can borrow \$..... at 6 per cent. interest on receiver's certificates, provided your petitioner is authorized and empowered to pledge the balance due hereinbefore referred to as security for the payment of said certificates and that said certificates be a first lien on said moneys.

8. That no other or previous application has been made for this relief.



Wherefore, your petitioner prays that he be authorized and empowered to borrow \$..... at 6 per cent. interest and to issue receiver's certificates therefor secured by an assignment of the amount due as hereinbefore referred to.

.....,  
*Petitioner.*

[ Verification. ]

**FORM No. 86.**

**ORDER AUTHORIZING ISSUANCE OF RECEIVER'S CERTIFICATES.**

At a stated term of the District Court of the United States for the ..... District of ....., held at the Court House, City of ....., on the ..... day of ..... 19...

PRESENT:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

.....

*Bankrupt.*

....., the receiver herein, having presented his petition duly verified to this court praying that he be allowed to borrow money and to issue receiver's certificates for funds required by him in the immediate operation and continuance of the bankrupt's business and the preservation of its property:

And the matter having come on to be heard, and after hearing....., Esq., of counsel for ....., the bankrupt, and ..... attorney, for petitioner (or lienors), and upon reading and filing the said petition the affidavit of ..... duly verified, and notice of application and presentation thereof, and upon the order authorizing the receiver to continue the business and the other proceedings herein had, and it appearing to the satisfaction of the court that necessity exists therefor,

Now, on motion of ....., attorney for the receiver, it is

Ordered, that the motion be, and the same hereby is granted, and that ..... the receiver herein, be and he hereby is authorized and empowered to issue, negotiate and dispose of receiver's certificates to the extent of and not exceeding the sum of \$....., bearing 6 per cent. interest, to raise funds for the use of the receiver in the continuance and operation of the business of the said bankrupt.

And it is further ordered, that the said certificates so to be issued by the said receiver shall be in the words and figures following:

[Here insert proposed form of certificate.]

And it is further ordered, that the earnings, income, profits, property and estate of the said ..... in the custody of the said receiver, as well as his successor or successors in office, or to hereafter come into the possession of a trustee when appointed in the said matter, are expressly charged with a lien for said certificates upon the said property and estate, as by the terms of the said order will more fully appear, and the payment of said certificates shall be made out of and from the property and assets of said company subject only to the lien of a certain mortgage or mortgages to ..... of ..... as trustee, or otherwise, securing the payment of the bonds of the said ..... of ....., issued in the principal sum of \$....., and to the rights, claims and demands of the holders and pledgees of said bonds.

And it is further ordered, that the said funds as raised by the receiver out of and from the sale and negotiation of the said certificates shall be used, and applied solely and exclusively for the operation, administration, and expenses of the business of the said bankrupt.

And it is further ordered, that the clerk of this court shall after the said receiver shall have signed said certificates, certify under this hand and the seal of this court said certificates so subscribed by the said receiver in the manner and form following:

"Certificate of the Clerk of the District Court of the United States for the ..... District of .....

I, ....., Clerk of the District Court of the United States for the District of ....., do hereby certify that the foregoing certificate or instrument of indebtedness signed by ....., as receiver of ..... is one of a series of certificates mentioned in and authorized by the order of the District Court of the United States for the ..... District of ....., made and entered on the ..... day of ....., 19..., 'In the Matter of ....., bankrupt,' pending in the said court upon the bankruptcy side of the said court.

.....  
*Clerk.*"

.....  
*D. J.*

## NOTES.

**Receiver's Certificates. Sec. 2, (5) (15).**

Above form with modifications approved by the District Court for Southern District of New York in the matter of "The Breakwater Construction and Engineering Co. Bankrupt."

Issued under the equity powers of the Court for purpose of raising money to procure materials, labor, supplies, etc., upon presumption of necessity.

Should be issued only when the preservation of the property in hands of the receiver presents urgent necessity therefor.

Rochester Trust etc. Co. v. Onteonta etc. R. Co. (N. Y. App. Div.), 122 N. Y. Supp. 19.

Rochester Trust etc. Co. v. Rochester etc. R. Co. (N. Y.), 60 N. Y. Supp. 409.

"The Circuit Court of Appeals has expressly declared that a receiver of a private corporation cannot be authorized to issue certificates to carry on the business of the corporation and make them a first and paramount lien on the corpus of the trust estate. It was said that the rule authorizing the issuing of receiver's certificates and constituting them a paramount lien on the property is based on the public character of the company is not to be extended to mere private corporations, but to those only of a quasi-public character."

Beach on Receivers (2nd Ed.), p. 448.

Hanna v. State Trust Co., 70 Fed. 2.

For the purpose of preserving the assets of the estate. In re Restein, 20 Am. B. R. 832; 162 Fed. 986.

In re Erie Lumber Co., 17 Am. B. R. 689; 150 Fed. 817.

As to loans made in excess of the amount receiver is authorized to borrow.

In re C. M. Burkhalter and Co. (D. C. Ala.), 25 Am. B. R. 378; 182 Fed. 353.

Certificates issued in excess of amount authorized are void even in the hands of innocent holders and will not be accorded priority of payment.

General authority of receiver not sufficient to issue.

Union Trust Co. v. Chicago etc. R. Co., 7 Fed. 513.

[Ed. Note.]

Certificates should recite terms of the order upon which issued.

The force and intent of the order not to be extended by implication.

**Priority of payment.**

In re Alaska Fishing and Development Co., 21 Am. B. R. 685.

[Ed. Note.]

Receivers' certificates are not commercial paper and innocent purchasers are not protected but charged with notice of the terms of the order.

Rights of lienholders.

Fidelity Ins. etc. Co. v. Roanoke Iron Co., 68 Fed. 623.

In re Clark Coal and Coke Co. (D. C. Pa.), 23 Am. B. R. 273, rev'g in part, s. c. 22 Am. B. R. 843.

FORM No. 87.

**ANSWER OF LIENOR TO RECEIVER'S PETITION TO ISSUE CERTIFICATES AS A PRIOR LIEN.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No. ....
---	---	----------

The ..... Company, as trustee under the mortgage dated ....., 19..., made by ....., bankrupt, to said company, appearing herein specially for the purpose only of opposing the application of ....., as receiver of the above named bankrupt, for leave to issue receiver's certificates to the amount of \$....., and making same a first lien on the property and plant of the said alleged bankrupt, answers the petition of said receiver, as follows:

I. It denies that it has any knowledge or information sufficient to form a belief as to any of the allegations contained in the paragraphs of said petition numbered .....

II. Further answering said petition and as further and separate defense thereto, the ..... Company, as trustee, shows and alleges:

1. That it is a corporation duly organized and existing under and by virtue of the laws of the State of ....., duly authorized to take and hold in trust the property conveyed to it by the mortgage hereinafter referred to.

2. That by an indenture dated ....., 19..., of which a copy is herewith submitted to the court, to which reference is hereby made as if the same were herein set forth at length, ....., the bankrupt, conveyed to ..... Company, as trustee, the property and franchises therein described, in trust for the equal *pro rata* benefit and security of all and every the holders of the bonds and interest coupons issued and to be issued under the said mortgage or deed of trust, and to enforce the payment thereof when payable in accordance with the true intent and meaning of the stipulations of the said indenture and of the said bonds and coupons, and without preference of the said bonds over any others thereof by reason of priority in the time of issue or negotiation thereof, or otherwise howsoever.

3. That said indenture of mortgage constitutes a lien upon all of the property and franchises which said ..... then owned and upon all the personal property which it thereafter acquired, to secure the issue of bonds therein described, and as such lien it was given and accepted in good faith and not in contemplation of or in fraud upon the bankruptcy laws of the United States, and for a present consideration and said mortgage or deed of trust was duly recorded according to law.

4. That said ..... Company is not a party to the above entitled proceeding and respectfully urges that this court is without power to displace the lien of the said mortgage for the security of the bonds issued and outstanding thereunder by authorizing the receiver above named to issue receiver's certificates which shall be a lien upon all the property and assets of the company prior to the lien of the mortgage above referred to.

Wherefore, ..... Company, as trustee under the said mortgage dated ....., 19..., respectfully prays that the petition of the said receiver be denied.

Dated, ....., 19...

..... Company,  
By .....  
, .....  
.....  
Attorney for ..... Co.,  
Office and Post Office Address,  
..... Street,  
.....

[Verification.]

### FORM No. 88.

#### RECEIVER'S CERTIFICATE.

CERTIFICATE NO. ....

Know all men by these presents:

That I, ....., as receiver of the ..... Company of ....., duly appointed as such receiver by an order of the District Court of the United States for the ..... District of ..... in certain proceedings in bankruptcy therein pending against the said ..... Company of ....., am indebted to the bearer in the sum of One Thousand Dollars (\$1,000), which I, the said ....., as such receiver, or my successor or successors as such receiver or receivers (or trustee when appointed) of the property and estate of the ..... Company of ....., promise as such receiver, and not individually, to pay to the bearer on or before the ..... day of ....., 19..., at the office of the .....



Trust Company, No. .... Street, in the City of ....., with interest thereon from the day and date thereof at the rate of ..... per cent. (.....%) per annum, payable semi-annually, at the office of said ..... Trust Company upon presentation hereof at the said Trust Company, both principal hereof and interest hereon being payable only out of the property and estate of the ..... Company of ....., or the proceeds or the income thereof in the hands of the receiver or receivers aforesaid or any trustee in bankruptcy hereafter appointed.

This certificate of indebtedness is issued by the said receiver pursuant to the order of the said District Court of the United States for the ..... District of ....., and is one of a series of like tenor and effect numbered consecutively from one to fifty, both inclusive, and is issued in the "Matter of the ..... Company Bankrupt" of ....., pending in the said District Court of the United States for the ..... District of ..... in accordance with the said order duly made and entered in the said District Court on the ..... day of ....., 19..., to which order reference is here made and which said order is hereby made a part hereof as though herein expressly incorporated.

All and every of said certificates of indebtedness issued under the said order of the said District Court of the United States are equally secured without preference of the one over the other, by and in the manner set forth in said order of the District Court of the United States, and will be paid and provided for by the said District Court of the United States in and by a proper decree or order in the said matter.

By the terms of the said order the earnings, income, profits, property and estate of the said ..... Company of ....., in the custody of the said receiver, as well as his successor or successors in office or to hereafter come into the possession of a trustee when appointed in the said matter, are expressly charged with a lien upon the said property and estate, as by the terms of the said order will more fully appear, and the payment of said certificates shall be subject to the rights, claims and demands of the holders of the express liens, if any, upon the bonds of the ..... Company of ..... numbered ..... to ..... consecutively, both inclusive, issued in the sum of \$. ....., and secured by the certain mortgage or mortgages to the ..... Trust Company of ..... as Trustee, or otherwise, to secure the payment of the said bonds and each and every of them as aforesaid, to the lien of which mortgages and the claims of the holders of the bonds secured thereby said certificates are expressly made subject, and that otherwise the said certificates shall have precedence and priority over all other liens, claims and demands against the aforesaid property and estate of the ..... Company of .....

And it is further understood and agreed that this certificate shall become due and payable ..... (....) months after the date thereof unless sooner paid by the said receiver pursuant to the order or decree of the said

District Court, and in the event of its non-payment by the said receiver as aforesaid, may be enforced by the holder thereof in any proper action or proceeding.

This certificate of indebtedness shall not become effective and valid until authenticated by the Clerk of the District Court of the United States for the ..... District of ....., under his seal by endorsement upon the back of this certificate executed by the said Clerk of the said Court.

Neither I, the said ....., individually or as receiver, nor any other receiver or receivers in the trust aforesaid, undertake, incur or assume any liability whatsoever other than as receiver, to pay the said certificates and the interest thereon out of the earnings, profits, income, property and estate of the ..... Company of ....., and shall in no event be liable other than for the proper application of the said earnings, profits, income, property and estate applicable to the payment of this certificate subject to the orders of the said District Court of the United States.

In witness whereof, the said ....., as receiver of ..... Company of ....., has pursuant to the order of said court hereunto set his hand and seal, at the City of ....., in the State of ....., this ..... day of ....., 19...

Certificate of the Clerk of the District Court of the United States  
for the ..... District of .....

I, ....., Clerk of the District Court of the United States for the ..... District of ....., do hereby certify that the foregoing certificate or instrument of indebtedness signed by ..... as receiver of ....., is one of a series of certificates mentioned in and authorized by the order of the District Court of the United States for the ..... District of ....., made and entered on the ..... day of ....., 19..., "In the Matter of ....., bankrupt," pending in the said court upon the bankruptcy side of the said court.

.....  
Clerk.

FORM No. 89.

**PETITION FOR APPOINTMENT OF ANCILLARY RECEIVER IN  
COURT OF ANCILLARY JURISDICTION.**

United States District Court,  
..... District of .....:  
In Bankruptcy.

<p>IN THE MATTER</p> <p>OF</p> <p>.....</p> <p><i>Bankrupt.</i></p>
---

To the District Court of the United States,  
for the ..... District of .....:

The petition of ..... respectfully shows to this court, and  
alleges:

1. That he is a creditor of ....., the bankrupt herein, in the  
sum of \$.....

2. That the said alleged bankrupt is a corporation existing under the laws  
of the State of ..... and was organized with a capital stock  
of \$....., for the purpose of .....  
That the principal place of business of the said company is in the City of  
..... and State of ....., but that the company's factory  
buildings and machinery, as well as most of its personal property are in the  
Town of ....., and within the jurisdiction of this court.

3. That on the ..... day of ....., 19... , a petition was filed  
in the District Court of the United States for the ..... District of  
..... by your petitioner together with other creditors of the above  
named corporation for the purpose of having it adjudged bankrupt; that the  
acts of bankruptcy set forth in the said petition were as follows: (1) That  
within four months next preceding the date of the said petition, the .....  
Company committed an act of bankruptcy in that it did suffer or permit,  
while insolvent, ..... of ....., to obtain a preference  
through legal proceedings, which preference is in the nature of an attachment  
against property of the said ..... Company located at .....,  
in the State of ..... Such preference has not been vacated nor  
discharged. (2) Also while insolvent, the said ..... Company per-  
mitted the following creditors to obtain preferences by making payments to  
them, to wit.: .....  
.....

4. That many of the creditors, whose accounts are overdue, have threatened to institute legal proceedings against the company. That there are no assets of the company immediately available for the purpose of paying said indebtedness.

5. The factory of the company has been shut down because of the inability of the company to pay wages to employees and expenses necessary for the continuance of the business. That said company has been unable to pay its current bills for some time past, and has been insolvent.

6. That on ..... day of ....., 19..., ....., Esq., was duly appointed receiver of the estate of said bankrupt in the ..... District of ....., by order of Hon. ...., Judge of the United States District Court for the said District, (the attorneys for the alleged bankrupt appearing at the same time and consenting in open court to the appointment.) That the bankrupt owns and possesses certain property consisting of ....., for conducting its business, in this State and District, and certain creditors are threatening suits against said property. Your petitioner is of the opinion and verily believes that it is absolutely necessary for the preservation of the property of the bankrupt and the protection of the creditors' interest therein, that an ancillary receiver be appointed by this court for the protection of said property.

Wherefore, your petitioner prays for an order of this court appointing ....., Esq., or some other competent person, ancillary receiver of all the property, assets and effects of the above named ..... Company, the bankrupt, which is situated within this jurisdiction, to care for and preserve the same until the appointment and qualification of a trustee or until the further order of this court, and for an order of this court directing the officers, managers and employees of the said ..... Company to deliver into the possession of the ancillary receiver so appointed, all of the property of the said ..... Company wheresoever situated which is not exempt by law and to otherwise comply with the terms of the said order, and that they, their agents, servants, attorneys and all persons be restrained and enjoined from in any way interfering with the possession of the said property, other than to turn the same over to the said ancillary receiver.

.....,

*Petitioner.*

[Verification.]

#### NOTES.

Ancillary jurisdiction is now provided for in Sec. 2 (20) by the Amendments of 1910.

In re Lipman (D. C. N. J.), 29 Am. B. R. 139; 201 Fed. 169.

Fidelity Trust Co. v. Gaskell (C. C. A. 8th Cir.), 28 Am. B. R. 4; 195 Fed. 865; 115 C. C. A. 527.

Progressive Building and Loan Co. Inc. v. Hall, 33 Am. B. R. 313; 220 Fed. 45; 135 C. C. A. 613.

Hartman, Trustee v. Ackoury (D. C. La.), 31 Am. B. R. 514; 210 Fed. 188.



Where process to seize alleged bankrupt's property is necessary, ancillary proceedings in proper district may be had.

In re Peiser, 7 Am. B. R. 690; 115 Fed. 199.

In re Dunseath and Son Co. (D. C. Pa.), 22 Am. B. R. 75; 168 Fed. 973.

In re Benedict (D. C. Wis.), 15 Am. B. R. 232; 140 Fed. 55.

In re Nelson and Bro. Co. (D. C. N. Y.), 18 Am. B. R. 66; 149 Fed. 590. In re Schrom, 3 Am. B. R. 352; 97 Fed. 160.

Ross-Meeham Foundry Co. v. Southern Car and Foundry Co., 10 Am. B. R. 624; 124 Fed. 403.

In re Granite City Bank of Dell Rapids (C. C. A. 8th Cir.), 14 Am. B. R. 404; 137 Fed. 818; 70 C. C. A. 316; aff'g 12 Am. B. R. 727.

Court has no power to make summary order for delivery of property to be enforced in another district.

Staunton v. Wooden (C. C. A. 9th Cir.), 24 Am. B. R. 736; 179 Fed. 61; 102 C. C. A. 355.

Power of ancillary receiver.

In re Peiser (*supra*).

Sale of property upon application of ancillary receiver after adjudication denied.

In re Brockton Ideal Shoe Co. (D. C. N. Y.), 27 Am. B. R. 577; 194 Fed. 233.

A receiver may not sue in a district other than that in which he was appointed.

In re National Mercantile Agency (D. C. Pa.), 12 Am. B. R. 189; 128 Fed. 639. Nor bring summary proceedings to recover assets in other jurisdiction.

In re Dunseath and Son Co. (*supra*).

An attachment will not lie against property in hands of ancillary receiver.

In re Nelson and Bro. Co. (*supra*).

Ancillary administration.

In re Hayes (D. C. N. Y.), 27 Am. B. R. 713; 192 Fed. 1018.

District court has jurisdiction to entertain proceedings instituted by a trustee in bankruptcy duly appointed in a bankruptcy proceeding pending in another district to compel the officers of the bankrupt to deliver to such trustee the documents in their possession relating to the business of the bankrupt.

When the original court of bankruptcy could act summarily, another court of bankruptcy sitting in another district can do so in aid of the court of original jurisdiction.

Babbitt, Trustee, Randolph Macon Coal Co. v. Dutcher and Gardiner (U. S. Sup.), 23 Am. B. R. 519; 216 U. S. 102; 54 L. Ed. 402; 30 Sup. Ct. Rep. 372.

In re Madson Steele Co. (Elkus, Petitioner), 23 Am. B. R. 614; 216 U. S. 115; 54 L. Ed. 407.

An ancillary receiver must account to the court which appointed him.

Loeser v. Dallas (C. C. A. 3rd Cir.), 27 Am. B. R. 733; 192 Fed. 909; 114 C. C. A. 349.

Jurisdiction of Circuit Court of Appeals on question of ancillary jurisdiction.

Fidelity Trust Co. v. Gaskell (*supra*).

[See analogous forms to obtain examination in another district: Forms Nos. 225-228.]

Power of ancillary court to award fees.

In re Musica and Son (D. C. La.), 30 Am. B. R. 555; aff'd, 31 Am. B. R. 687; 211 Fed. 326; 127 C. C. A. 575; Appeal to Supreme Court dismissed in 32 Am. B. R. 559.

See Acme Harvester Co. v. Beekman Lumber Co., 27 Am. B. R. 262; 222 U. S. 300-306; 56 L. Ed. 208.



**FORM No. 90.**

**ORDER APPOINTING ANCILLARY RECEIVER.**

At a stated term of the District Court  
of the United States for the .....  
District of ..... held at the Court  
House, City of ....., on the  
..... day of ....., 19...

PRESENT:

Hon. ....,  
*District Judge.*

IN THE MATTER
OF
.....
<i>Bankrupt.</i>

Upon the petition of ....., verified the ..... day of  
....., 19..., praying for the appointment of an ancillary  
receiver in bankruptcy in this jurisdiction and it appearing that an involuntary  
petition in bankruptcy was filed on the ..... day of .....,  
19..., and is now pending in the District Court of the United States for the  
..... district of ....., against the above named bankrupt;  
that ..... has been appointed receiver, duly qualified and is now  
acting as such receiver; that the said bankrupt owns and possesses certain  
property consisting of ..... in this State and district; that it  
is absolutely necessary for the preservation of this property and in aid of the  
receiver heretofore appointed in said ..... District of .....  
that an ancillary receiver be appointed herein, now upon motion of .....  
....., Esq., attorney for said petitioner, it is

Ordered, that the prayer of said petition be and hereby is granted and ....  
....., Esq., be and he hereby is appointed ancillary receiver of the  
above named bankrupt in and for this district with all the rights and powers  
to carry into force and effect the orders of the original court of jurisdiction  
and it is further,

Ordered, that said receiver furnish a bond in the sum of \$. .... for the  
faithful discharge of his duties as such receiver and it is further,

Ordered, that said bankrupt forthwith deliver to said receiver all of his  
property, assets and effects now in his possession or under his control, and

that said bankrupt and all other persons, firms, corporations and creditors of said bankrupt, as well as their and each of their attorneys, agents and servants, and all sheriffs, marshals and other officers, deputies and their employees, are hereby jointly and severally restrained and enjoined from removing, transferring or otherwise interfering with the property, assets and effects of the above named alleged bankrupt, and from prosecuting, executing or suing out of any court, any process, attachment, replevin or other writ for the purpose of taking possession, impounding or interfering with any property, assets or effects of the above named bankrupt, and from molesting, disturbing or interfering with the ancillary receiver herein appointed in the discharge of his duties.

.....,  
*D. J.*

## PART III.

### PROCEEDINGS BEFORE REFEREE AFTER ADJUDICATION.

- FORM No. 91. Referee's Oath of Office.  
92. Bond of Referee.  
93. Notice of Adjudication.  
94. Order for first Meeting of Creditors after thirty Days.  
95. Notice of first Meeting of Creditors.  
96. Short Form of Notice used in Southern District of New York by local Rule.  
97. Affidavit of Publication of Notice of first Meeting.  
98. Affidavit of mailing same.  
99. Lists of Debts proved at first Meeting.  
100. Appointment of Trustee by Creditors.  
101. Appointment of Trustee by Referee.  
102. Notice to Trustee of his Appointment.  
103. Order approving Trustee's Bond.  
104. Order that no Trustee be appointed.  
105. Notice to Trustee to file Report.  
106. Order appointing Attorney for Trustee.  
107. Notice of defective Proof of Claim.  
108. Petition to amend Schedules.  
109. Order allowing Amendment of Schedules.  
110. Affidavit of Bankrupt as to Exemptions.  
111. Order allowing Exemptions when no Trustee is Appointed.  
112. Petition by Bankrupt for Review of Referee's Order on Exemptions.  
113. Certificate of Falsity of Pauper Affidavit.  
114. Order that Trustee transfer Copyright.  
115. Petition for Meeting of Creditors to consider proposed Compromise of Controversy.  
116. Notice to Creditors of Special Meeting.  
117. Order allowing Compromise.  
118. Petition for Meeting of Creditors to indemnify Trustee.  
119. Petition to compel Bankrupt to turn over concealed Assets.  
120. Summary Order that Bankrupt turn over concealed Assets.  
121. Petition to re-examine Fee of Bankrupt's Attorney.  
122. Order for Repayment by Attorney.  
123. Exceptions to Referee's Order.  
124. Petition to review Referee's Order.  
125. Referee's Certificate on Review.  
126. Order dismissing Petition to review Referee's Order.  
127. Referee's Certificate of Contempt for Failure to obey summary Order.  
128. Referee's Certificate for Failure of Witness to appear.  
129. Referee's Certificate closing Proceeding for Lack of Prosecution.  
130. Referee's Certificate of Disqualification.  
131. Order substituting new Referee.  
132. Petition for Appointment of Appraisers.  
133. Appointment, Oath and Report of Appraisers.

- FORM No. 134. Petition of Appraisers for Allowance for Services.  
 135. Order declaring first Dividend and Dividend Sheet.  
 136. Notice of Dividend and Warrant.  
 137. Order that Trustee pay to Creditor, Dividend heretofore declared.  
 138. Notice of final Meeting.  
 139. Order passing Trustee's Account and declaring Dividend.  
 140. Order fixing Allowance of Bankrupt's Attorney.  
 141. Referee's Certificate of Indemnity.  
 142. Petition and Order for Redemption of Property from Lien.  
 143. Petition for Order of Protection.  
 144. Order of Protection.

**FORM No. 91.**

[Official.]

**REFEREE'S OATH OF OFFICE.**

I, ....., do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform, all the duties incumbent on me as referee in bankruptcy, according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States.

So help me God!

Subscribed and sworn to before me this ..... day of .....,  
 A. D. 19...

.....,  
*District Judge.*

**FORM No. 92.**

[Official.]

**BOND OF REFEREE.**

Know all men by these presents:

That we, ....., of ....., as principal, and .....  
 ..... of ..... and ..... of ....., as  
 sureties, are held and firmly bound to the United States of America in the  
 sum of ..... dollars, lawful money of the United States, to be  
 paid to the said United States, for the payment of which, well and truly to  
 be made, we bind ourselves, our heirs, executors and administrators, jointly  
 and severally, by these presents.

Signed and sealed this ..... day of ....., A. D. 19...

The condition of this obligation is such that whereas the said .....  
 has been on the ..... day of ....., A. D. 19..., appointed by the  
 Honorable ....., Judge of the District Court of the United

States for the ..... District of ....., a referee in bankruptcy in and for the County of ....., in said district, under the Acts of Congress relating to bankruptcy.

Now, therefore, if the said ..... shall well and faithfully discharge and perform all the duties pertaining to the said office of referee in bankruptcy, then this obligation to be void; otherwise to remain in full force and virtue.

Signed and sealed  
in the presence of:

..... [L. S.]  
..... [L. S.]  
..... [L. S.]

Approved this ..... day of ....., A. D. 19....  
.....,  
*District Judge.*

NOTES.

In re Covington, 6 Am. B. R. 373; 110 Fed. 143

**FORM No. 93.**

**NOTICE OF ADJUDICATION.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER	} No. ....
OF	
..... <i>Bankrupt.</i>	

To  
..... Esq.,  
*Attorney for the Bankrupt.*

The above entitled proceeding has been referred to me as referee in bankruptcy, and by the order of this court the bankrupt ..... required to appear before me at my office, No. .... Street, in the City of ..... on the ..... day of ....., 19..., at ..... o'clock .....M.



The sum of \$..... should be then deposited with me as indemnity for the estimated expenses and disbursements up to discharge, if unopposed.

Dated, ....., 19...

.....,  
*Referee in Bankruptcy.*

**FORM No. 94.**

**ORDER FOR FIRST MEETING OF CREDITORS AFTER THIRTY DAYS.**

United States District Court,

..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

Before ....., Referee in Bankruptcy, at No. ....  
Street, ....., on ....., 19...

It appearing to me that for the reason that, (namely) ....., the first meeting of creditors cannot be held within the time provided by Section 55 of the United States Bankruptcy Act, I hereby order that the first meeting of creditors in the above bankruptcy proceedings be held at the office of ....., Referee, No. ...., Street, in the City of ....., County and State of ....., on the ..... day of ....., A. D. 19..., at ..... o'clock in the ..... noon, at which time the creditors may attend, prove their claims, appoint a trustee, examine the bankrupt and transact such other business as may properly come before such meeting.

Dated ....., 19...

.....,  
*Referee in Bankruptcy.*

**FORM No. 95.**

[Official.]

**NOTICE OF FIRST MEETING OF CREDITORS.**

United States District Court,  
for the ..... District of ..... :  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No. ....
---	---	----------

To the creditors of ....., of the City of .....  
....., and County of ....., and district aforesaid, a  
bankrupt: Notice is hereby given that on the ..... day of ..... A. D.,  
19..., the said ..... was duly adjudicated bankrupt, and that  
the first meeting of creditors will be held at the office of .....  
..... Esq., No. ...., ..... City, on the ..... day  
of ....., A. D., 19..., at ..... o'clock in the ..... noon, at which  
time the said creditors may attend, prove their claims, appoint a trustee,  
examine the bankrupt and transact such other business as may properly come  
before said meeting.

Dated ....., 19...

.....  
*Referee in Bankruptcy.*

**FORM No. 96.****SHORT FORM OF NOTICE USED IN SOUTHERN DISTRICT OF  
NEW YORK.**

United States District Court,  
Southern District of New York:  
No. ....  
In Bankruptcy.

..... Bankrupt.  
..... was duly adjudicated bankrupt, on .....  
19... The first meeting of creditors will be held at my office, No. ....

City of New York, on ..... , 19.... at ..... M. Creditors may prove claims, appoint a trustee, examine the bankrupt, and transact such other business as may come before said meeting.

.....  
*Referee in Bankruptcy.*

NOTES.

Act, Sec. 55.

Cross-references. Secs. 7 (9), 44, 56, 57, 58.

General Orders, IV, XII.

Construction of statute.

In re Back Bay Automobile Co., 19 Am. B. R. 835; 158 Fed. 679.

Who may participate.

In re Columbia Iron Works, 14 Am. B. R. 526; 142 Fed. 234.

The adjournment of a meeting of creditors for the purpose of allowing a restatement or perfecting a proof of debt is discretionary with the referee and will not be interfered with except for abuse.

In re Morris, 18 Am. B. R. 828; 154 Fed. 211.

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**FORM No. 97.**

**AFFIDAVIT OF PUBLICATION OF NOTICE OF FIRST MEETING.**

STATE OF ..... }  
County of ..... } ss.:

[Notice Annexed.]

....., being duly sworn, saith that he is proprietor (or principal clerk of the publisher) of ..... a daily newspaper printed and published in the City of ....., and designated for the publication of notices in bankruptcy in the County of ....., in said district: that the notice hereto annexed was published in the said ..... one time, to wit: on ....., 19....

Sworn to before me this ..... day of ....., 19....

**FORM No. 98.****AFFIDAVIT OF MAILING NOTICE OF FIRST MEETING.**

In the District Court of the United States,  
 for the ..... District of .....:  
 In Bankruptcy.

IN THE MATTER  OF  ..... <i>Bankrupt.</i>	}	No. ....
--	---	----------

STATE OF .....	}	ss.:
County of .....		
District of .....		

..... being duly sworn, deposes and says: I am employed in the office of ....., referee in bankruptcy, and am more than eighteen years of age; on the ..... day of ....., 19... I deposited in the Post Office in said city of ..... copies of the annexed notice to creditors, each contained in a securely closed envelope, franked by proper notice of official business whenever addressed to a place within the United States, and duly postpaid whenever addressed to a place without the United States, and duly directed respectively to each of the creditors of said bankrupt named in the schedules filed herein, at the respective addresses stated in said Schedules, except in the cases, if or any, in which the address of the creditor is stated in said schedules to be unknown, or where the creditor has designated an address other than that stated in said schedules, and in such case to designated address as on file herein.

Subscribed and sworn to before me  
 this ..... day of ....., A. D. 19...  
 [Notice Annexed.]

**FORM No. 99.**

[Official.]

**LIST OF DEBTS PROVED AT FIRST MEETING.**

In the District Court of the United States for the ..... District  
of .....,

In Bankruptcy.

IN THE MATTER OF ..... <i>Bankrupt.</i>	} No. ....
--	------------

At ....., in said district, on the ..... day of ..... A. D., 19.  
before ....., referee in bankruptcy.

The following is a list of creditors who have this day proved their debts:

Names of Creditors.	Residence.	Debts proved	
		Dolls.	Cts.

.....  
*Referee in Bankruptcy.*

**NOTES.**

This form is rarely used.

The referees keep list in claim book and transmit dividend sheets to the trustee.



**FORM No. 100.**

[*Official.*]

**APPOINTMENT OF TRUSTEE BY CREDITORS.**

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER	}	No. ....
OF		
..... <i>Bankrupt.</i>		

At ....., in said District, on the ..... day of ....., A. D., 19..., before ....., Referee in Bankruptcy.

This being the day appointed by the court for the first meeting of the creditors in the above bankruptcy, and of which due notice has been given in the ....., we, whose names are hereunder written, being the majority in number and in amount of claims of the creditors of the said bankrupt, whose claims have been allowed, and who are present at this meeting, do hereby appoint ..... of ..... in the county of ..... and State of ....., to be the Trustee of the said bankrupt's estate and effects, and we do fix the amount of his bond at ..... dollars.

SIGNATURES OF CREDITORS.	RESIDENCES OF THE SAME.	AMOUNT OF DEBT.

Ordered that the above appointment of Trustee be, and the same is hereby approved.

.....,  
*Referee in Bankruptcy.*

NOTES.

Act, Sec. 44.

Cross-references, 1, (26), 2, (17), 45, 46, 50-b, c, k, 56, 57, 63.

General Orders, XIII, XIV, XV, XVI, XVII, XXV.

Creditors have an unqualified right to elect.

In re Lewensohn, 3 Am. B. R. 299; 98 Fed. 576.

In re Eastlack, 16 Am. B. R. 529; 145 Fed. 68.

In re Ketterer Mfg Co., 19 Am. B. R. 225; 155 Fed. 987.

In re Eagles and Crisp, 3 Am. B. R. 733; 99 Fed. 696.

In re Kaufman (D. C. Ky.), 24 Am. B. R. 117; 179 Fed. 552.

When adjournment should be had to enable creditors to secure proper representation.

In re E. A. Walker and Co., 29 Am. B. R. 499; 204 Fed. 132.

Election vacated for improper refusal to allow vote.

In re Roy (D. C. N. Y.), 26 Am. B. R. 4; 185 Fed. 551.

Combination of creditors as against public policy.

In re Kenney and Co., 14 Am. B. R. 611; 136 Fed. 451.

Voters at creditors' meeting.

Claims procured by bankrupt excluded.

In re Lloyd, 17 Am. B. R. 96; 148 Fed. 92.

In re Hanson, 19 Am. B. R. 235; 156 Fed. 417.

In re James H. Turner and Co., 20 Am. B. R. 646; dist'g In re Lloyd (*supra*).

In re Eastlack (*supra*).

In re Cooper, 14 Am. B. R. 320; 135 Fed. 196.

In re Dayville Woolen Co., 8 Am. B. R. 85; 114 Fed. 674.

In re McGill (C. C. A. 6th Cir.), 5 Am. B. R. 155; 106 Fed. 57; 45 C. C. A. 218; *aff'g* Falter v. Reinhard, 4 Am. B. R. 782; 104 Fed. 292.

Where bankrupt's attorney solicits proxies, such votes may be rejected as manifestly in the interest of the bankrupt.

In re Van De Mark (D. C. N. Y.), 23 Am. B. R. 760; 175 Fed. 287.

Former attorney of bankrupt holding majority in number and amount of claims.

In re E. A. Walker and Co. (*supra*).

Solicitation of claims.

In re Crooker and Co. (D. C. Mass.), 27 Am. B. R. 241.

Absent creditors not considered in voting for trustee.

In re Mackellar, 8 Am. B. R. 669; 116 Fed. 547.

In re Henschel (C. C. A. 2nd Cir.), 7 Am. B. R. 662; 113 Fed. 443; 51 C. C. A. 277; *rev'g* 6 Am. B. R. 25 and 6 Am. B. R. 305; 109 Fed. 861.

Mere filing of objections should not exclude *bona fide* creditor from voting.

In re Kelly Dry Goods Co., 4 Am. B. R. 528; 102 Fed. 747.

There may be one or three trustees.

In re Fisher, 14 Am. B. R. 366; 135 Fed. 223.

Votes cast by a commissioner of deeds acting under a power of attorney acknowledged before himself should be excluded.

In re Grossman (D. C. N. Y.), 34 Am. B. R. 32; 225 Fed. 1020.

A receiver who is a candidate for office of trustee and is defeated has no standing to appeal.

s. c. (*supra*).

In re Sugenheimer, 1 Am. B. R. 425; 91 Fed. 744.

Creditor who is also bankrupt's debtor excluded.

In re Duryea Power Co., 20 Am. B. R. 219; 159 Fed. 783.

Secured creditors.

In re Milne, Turnbull and Co., 20 Am. B. R. 248; 159 Fed. 280.

In re Columbia Iron Works, 14 Am. B. R. 526; 142 Fed. 234.

**Alleged preferred creditors.**

In re Milne, Turnbull and Co. (*supra*).

In re Columbia Iron Works (*supra*).

In re Malino, 8 Am. B. R. 205; 118 Fed. 368.

What constitutes "splitting claims."

In re L. W. Day and Co. (*infra*).

Trustee should be free from entangling alliances.

In re Rekersdres, 5 Am. B. R. 811; 108 Fed. 206.

In re Sitting, 25 Am. B. R. 682; 182 Fed. 917.

**At the first meeting or adjournment thereof.**

In re Nice and Schrieber, 10 Am. B. R. 639; 123 Fed. 987.

Trustee of partnership, trustee of individual partners.

In re Coe, 18 Am. B. R. 715; 154 Fed. 162.

In re Beck, 6 Am. B. R. 554; 110 Fed. 140.

Procuring list of creditors from bankrupt.

In re J. H. Turner and Co., 20 Am. B. R. 646.

Improper interference by officers of bankrupt company.

In re L. W. Day and Co., 23 Am. B. R. 56; 174 Fed. 164; aff'd (C. C. A. 2nd Cir.), 24 Am. B. R. 252; 178 Fed. 545.

Mere fact that claimant is a director and stockholder of a bankrupt corporation does not *ipso facto* in the absence of collusion or improper influence disqualify him from voting.

In re Stradley and Co., 26 Am. B. R. 149; 187 Fed. 285.

In re Syracuse Paper and Pulp Co. (D. C. N. Y.), 21 Am. B. R. 174; 164 Fed. 275.

**Approval of appointment of trustee.**

In re Lewensohn, 3 Am. B. R. 299; 98 Fed. 576.

In re Anson Mercantile Co., 25 Am. B. R. 429; 185 Fed. 993.

In re Gordon, Supply and Mfg. Co., 12 Am. B. R. 94; 129 Fed. 622.

In re Van De Mark (*supra*).

In re Ployd, 25 Am. B. R. 194; 183 Fed. 791.

**Disapproval for non-residence.**

In re Jacobs and Roth, 18 Am. B. R. 728; 154 Fed. 988.

In re Mangan, 13 Am. B. R. 303; 133 Fed. 1000.

In re Law, 13 Am. B. R. 650.

**Subject to review by District Judge.**

In re Hanson, 19 Am. B. R. 235; 156 Fed. 417.

In re Hare, 9 Am. B. R. 520; 119 Fed. 246.

An alien may be chosen by creditors as trustee if competent to perform the duties of the office and is a resident of or has an office in the district.

In re Coe, 18 Am. B. R. 715; 154 Fed. 162.

Former attorney of bankrupt not proper for trustee.

In re Wink, 30 Am. B. R. 298; 206 Fed. 348.

Undischarged bankrupt in another proceeding not proper person. In re Smith, 1 Am. B. R. 37.

In re McGill (C. C. A. 6th Cir.), 5 Am. B. R. 155; 106 Fed. 57; 45 C. C. A. 218; aff'g Falter v. Reinhard, 4 Am. B. R. 782; 104 Fed. 292.

Effect of disapproval by referee.

In re Margolies (D. C. N. Y.), 27 Am. B. R. 398; 191 Fed. 369.

When referee's disapproval should not be exercised.

In re Kreuger, 27 Am. B. R. 440; 196 Fed. 705.

*In re Clay* (Petition of Kellar) (C. C. A. 1st Cir.), 27 Am. B. R. 715; 192 Fed. 830; 113 C. C. A. 154.

When selection not interfered with.

*In re Blue Ridge Packing Co.*, 11 Am. B. R. 36; 125 Fed. 619; *In re Lazoris*, 10 Am. B. R. 31; 120 Fed. 716.

Not disturbed by Circuit Court of Appeals except for abuse of discretion.

*In re Merritt Construction Co.* (C. C. A. 2d Cir.), 33 Am. B. R. 616; 219 Fed. 555; 135 C. C. A. 323.

## FORM No. 101.

[Official.]

### APPOINTMENT OF TRUSTEE BY REFEREE.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER	}	No. ....
OF		
..... <i>Bankrupt.</i>		

At ..... in said ..... District on the ..... day of ....., A. D. 19..., before ....., Referee in Bankruptcy.

This being the day appointed by the Court for the first meeting of creditors under said bankruptcy, and of which due notice has been given in the ....., I, the undersigned referee of the said court in bankruptcy, sat at the time and place above mentioned, pursuant to such notice, to take the proofs of debt and for the choice of trustee under the said bankruptcy; and I do hereby certify that the creditors whose claims had been allowed and were present or duly represented, failed to make choice of a trustee of said bankrupt's estate, and therefore I do hereby appoint ..... of ..... in the County of ..... and State of ....., as trustee of the same, (and fix his bond as such trustee at \$.....).

.....  
*Referee in Bankruptcy.*

#### NOTES.

##### Appointment by Referee.

Where creditors fail to elect.

*In re Morris*, 18 Am. B. R. 828; 154 Fed. 211.

*In re Brooke et al.*, 4 Am. B. R. 50; 100 Fed. 432.

In re Kuffler, 3 Am. B. R. 162; 97 Fed. 187.

In re Richards, 4 Am. B. R. 631; 103 Fed. 849.

In re Machin and Brown, 11 Am. B. R. 449; 128 Fed. 315.

In re Cohen, 11 Am. B. R. 439; 131 Fed. 391.

In re Henschel, 6 Am. B. R. 305; 109 Fed. 861; as reversed s. c. 7 Am. B. R. 662; 113 Fed. 443; 51 C. C. A. 277.

In re E. T. Kenney and Co., 14 Am. B. R. 611; 136 Fed. 451.

In re Knox (C. C. A. 6th Cir.), 34 Am. B. R. 461; 221 Fed. 36; 136 C. C. A. 562.

When referee may not appoint. On disapproval of election of a trustee, must call another meeting of creditors for purpose of electing another trustee.

In re Mackellar, 8 Am. B. R. 669; 116 Fed. 547.

In re Van De Mark (D. C. N. Y.), 23 Am. B. R. 760; 175 Fed. 287; In re Lewensohn, 3 Am. B. R. 299; 98 Fed. 576.

In re Hare, 9 Am. B. R. 520; 119 Fed. 246.

In re Kaufman, 24 Am. B. R. 117; 179 Fed. 552.

### FORM No. 102.

[Official.]

#### NOTICE TO TRUSTEE OF HIS APPOINTMENT.

United States District Court,

for the ..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

To ..... of ..... in the County of .....,  
and district aforesaid:

I hereby notify you that you were duly appointed trustee of the estate of the above named bankrupt at the first meeting of the creditors, on the ..... day of ....., A. D., 19..., and I have approved said appointment. The penal sum of your bond as such trustee has been fixed at ..... Dollars. You are required to notify me forthwith of your acceptance or rejection of the trust.

Dated at ..... the ..... day of ....., 19..

.....  
*Referee in Bankruptcy.*

NOTE.

See General Order XVI.



**FORM No. 103.**

[Official.]

**ORDER APPROVING TRUSTEE'S BOND.**

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No. ....
---	---	----------

It appearing to the Court that ..... of ..... and in said District, has been duly appointed trustee of the estate of the above named bankrupt, and has given a bond with sureties for the faithful performance of his official duties, in the amount fixed by the creditors (or by order of the court) to wit:—in the sum of ..... dollars: it is

Ordered that the said bond be, and the same is hereby approved.

Dated ....., 19...

.....  
*Referee in Bankruptcy.*

**FORM No. 104.**

**ORDER THAT NO TRUSTEE BE APPOINTED.**

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No. ....
---	---	----------

At ..... in the City of ..... and County of .....  
..... in said District, on the ..... day of .....  
A. D., 19... before ....., Esq., Referee in Bankruptcy.

This being the day appointed by the Court for the first meeting of creditors in the above entitled proceeding, of which due notice has been given by publication of the same once in the ....., and by mailing a notice to each of said creditors as required by law; and it appearing that the schedules of the bankrupt disclose no assets except such as are exempt, and that no creditor has appeared and filed a proof of claim at said meeting, and that the appointment of a trustee of the bankrupt's estate is not now desirable, it is hereby

Ordered, that, until further order of the Court, no trustee be appointed and no other meeting of the creditors be called.

.....,  
*Referee in Bankruptcy.*

### FORM No. 105.

#### NOTICE TO TRUSTEE TO FILE REPORT.

United States District Court,  
 for the ..... District of .....:  
 In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

Office of .....,

Referee in Bankruptcy, No. .... St., City of .....

....., 19...

To ....., Esq.,

Trustee, No. .... Street, City of .....

A report prescribed by Section 47 of the United States Bankruptcy Act, subdivision 10, has not been filed by you. Kindly file the same on or before ....., 19...

Yours truly,

.....,  
*Referee in Bankruptcy.*

#### NOTES.

See Rule 4 of Instructions to Referees in Southern District of New York.

## FORM No. 106.

**ORDER APPOINTING ATTORNEY FOR TRUSTEE.**

United States District Court,  
 for the ..... District of .....:  
 In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

Upon the annexed petition of ....., trustee herein, the affidavit of ....., attorney, both duly verified, and sufficient reason appearing to me therefor, it is hereby

Ordered, that ....., as trustee herein, be and he hereby is authorized and empowered to retain Messrs. ...., of No. ...., City of ....., as his attorneys herein.

Dated ....., 19...

.....  
*Referee in Bankruptcy.*

## NOTES.

**Employment of Counsel by Trustee.**

For forms of petition and affidavit therefor, see "Receivers." Forms Nos. 62, 63.

Duty to employ counsel.

*In re McKenna* (D. C. N. Y.), 15 Am. B. R. 4; 137 Fed. 611.

*In re Baber*, 9 Am. B. R. 406; 119 Fed. 525.

Where attorney represents adverse interests.

*In re Rusch*, 5 Am. B. R. 565; 105 Fed. 607.

Right to select his own counsel.

*In re Columbia Iron Works*, 14 Am. B. R. 526; 142 Fed. 234; *In re Abram*, 4 Am. B. R. 575; 103 Fed. 272.

**FORM No. 107.****NOTICE OF DEFECTIVE PROOF OF CLAIM.**

United States District Court,  
 for the ..... District of .....:  
 In Bankruptcy.

IN THE MATTER  OF  .....  <i>Bankrupt.</i>	}	No. ....
--	---	----------

Office of ....., referee in bankruptcy, No. .... Street,  
 City of ....., ....., 19...

Dear Sir:

Your statement of claim against the above named bankrupt has been received and is herewith returned for correction.

Please see Section 57 of the Bankruptcy Act, and Rule XXI of the General Orders in Bankruptcy of the U. S. Supreme Court.

The charge allowed by the United States Bankruptcy Act, on filing of claim, is twenty-five cents, to be returned to you out of the assets, if any, which please remit with corrected proof of claim.

Yours truly,

..... ,

*Referee in Bankruptcy.*

FORM No. 108.

PETITION TO AMEND SCHEDULES.

United States District Court,  
for the ..... District of ..... :  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No. ....
---	---	----------

To ....., Esq., Referee in Bankruptcy:

Your petitioner respectfully shows:

That he was duly adjudicated a bankrupt herein on ..... day of  
....., 19..., and that his schedules as required by Section 7 (8) of  
the bankruptcy law of 1898, have been duly filed herein.

That the first meeting of your petitioner's creditors has been called for the  
..... day of ....., 19...

That, at the time your petitioner's schedule of creditors was prepared, by  
inadvertence, the names and the statutory facts concerning the claims of  
certain creditors were omitted therefrom.

That such names and facts are as follows: .....  
.....  
.....

That the above mentioned creditors have not been regularly notified of said  
first meeting of creditors.

That at the time your petitioner's schedule of property was prepared, by  
inadvertence, a certain interest in property vested in your petitioner was  
omitted therefrom, namely: .....  
.....  
.....

That no previous application has been made for the order hereinafter asked.

Wherefore, your petitioner prays for an order amending said schedules in  
the particulars above specified, and that notice be given accordingly.

Dated at ....., 19...

.....,  
*Petitioner.*

[Verification.]



**FORM No. 109.**

**ORDER ALLOWING AMENDMENT OF SCHEDULES.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p>.....</p> <p style="text-align: right;"><i>Bankrupt.</i></p>	}	No.....
--	---	---------

Application having been heretofore made for an order amending Schedules ..... previously filed herein, and an order to show cause having been granted thereon on the ..... day of ....., 19..., and proof of mailing said order, as provided therein, now being made, and .....

[Recite here opposition, if any.]

Now, on motion of ....., Esq., attorney for said bankrupt, it is Ordered, that Schedule A ( ) herein be amended by adding thereto, in the proper columns, the following facts: .....

.....  
That Schedule B ( ) be amended by adding thereto the following words: .....

.....  
Dated ....., 19...

.....,  
*Referee in Bankruptcy.*

## FORM No. 110.

## AFFIDAVIT OF BANKRUPT AS TO EXEMPTIONS.

United States District Court,  
 ..... District of .....:  
 In Bankruptcy.

<p>IN THE MATTER</p> <p>OF</p> <p>.....</p> <p><i>Bankrupt.</i></p>
---

STATE OF ..... }  
 County of ..... } ss.:

..... being duly sworn deposes and says:

1. That he is the bankrupt herein and was duly adjudicated in this court on the ..... day of ....., 19...

2. That deponent filed his duly verified schedules herein on the ..... day of ....., 19..., and in schedule B (5) set forth the property to which he deems himself entitled by way of exemptions according to the law of the State of .....

3. That deponent has had his domicile in said state for the greater portion of six months immediately preceding the filing of his petition in bankruptcy herein.

4. That said property is of the value of ..... dollars estimated as follows:

.....

5. That said property should be set off to deponent as exempt property.

Sworn to before me this ..... day of ....., 19...

FORM No. 111.

ORDER ALLOWING EXEMPTIONS WHEN NO TRUSTEE APPOINTED.

United States District Court,  
.....District of .....:  
In Bankruptcy.

IN THE MATTER  OF  .....  <i>Bankrupt.</i>	No.....
--	---------

An order having been made herein that no trustee be appointed as provided in General Order XV; and it appearing, from the affidavit of the bankrupt filed on this application and Schedule B (5) filed with his petition herein, that he has duly claimed and is entitled to the exemptions hereinafter mentioned: Now, on motion of ....., Esq., his attorney, it is  
Ordered, that the said bankrupt's claim to exemptions be determined as follows:

That he is entitled under ..... of the laws of the State of ....., to the following property: .....  
.....  
.....  
and that the same be delivered to him forthwith.

Dated ....., 19...  
.....,  
*Referee in Bankruptcy.*

**FORM No. 112.**

**PETITION BY BANKRUPT FOR REVIEW OF REFEREE'S ORDER ON EXEMPTIONS.**

In the District Court of the United States for the ..... District  
of .....

In Bankruptcy.

IN THE MATTER	} No. ....
OF	
..... <i>Bankrupt.</i>	

To ....., Esq., Referee in Bankruptcy:

Your petitioner respectfully shows:

That he was adjudged a bankrupt herein on the ..... day of ....., 19... and that a trustee of his estate was in such proceeding subsequently appointed.

That such trustee, on the ..... day of ....., 19..., filed a report of exempted property herein, and that, on the ..... day of ....., 19..., an order was entered determining your petitioner's claim to exempt property, as stated in such report .....

That such order was erroneous, for the following reasons:

Wherefore, your petitioner, feeling aggrieved because of said order, prays that said trustee's report and the said order be reviewed, as provided in the Bankruptcy Law of 1898 and General Order XXVII.

Dated ....., 19...

*Bankrupt.*

[Verification.]

NOTES.

**Exemptions. Secs. 6, 2 (11), 7-a (8), 47-a (11).**

**Cross-references, 70-a.**

**General Orders, XVII.**

**The State law where bankrupt has domicile controls.**

In re Tobias, 4 Am. B. R. 555; 103 Fed. 68.

Richardson v. Woodward, 5 Am. B. R. 94; 104 Fed. 873.

In re Anderson, 6 Am. B. R. 555; 110 Fed. 141.

In re Manning, 7 Am. B. R. 571; 112 Fed. 948.

- In re Wood, 17 Am. B. R. 931; 147 Fed. 877.  
 In re Owings (D. C. N. Car.), 15 Am. B. R. 472; 140 Fed. 739.  
 Smalley v. Laugenour, 13 Am. B. R. 692; 196 U. S. 93; 49 L. Ed. 409.  
 In re Fisher, 15 Am. B. R. 652; 142 Fed. 205.  
 In re Lynch, 4 Am. B. R. 262; 101 Fed. 579.  
 In re Wunder, 13 Am. B. R. 701; 133 Fed. 821.  
 Duncan v. Ferguson-McKinney Dry Goods Co. (C. C. A. 5th Cir.), 18 Am. B. R. 155; 150 Fed. 269; 80 C. C. A. 157.  
 In re O'Hara, 20 Am. B. R. 714; 162 Fed. 325.  
 In re Sullivan (C. C. A. 8th Cir.), 17 Am. B. R. 578; 148 Fed. 815; 78 C. C. A. 505.  
 In re Downing (D. C. Ky.), 15 Am. B. R. 423; 148 Fed. 120.  
 In re Andrews and Simonds (D. C. Mich.), 27 Am. B. R. 116; 193 Fed. 776.  
 In re Cheatham, 31 Am. B. R. 520; 210 Fed. 370.  
 Jurisdiction as to property not capable of being segregated.  
 Bank of Nez Perce v. Pindel, 28 Am. B. R. 69; 193 Fed. 917; 113 C. C. A. 545.  
 Not the intent of the Bankruptcy Act to enlarge the exemptions available under the State law.  
 In re Boyd, 10 Am. B. R. 337; 120 Fed. 999.  
 Nor to cover exoneration from the payment of the fees provided for the court officers.  
 In re Mason, 25 Am. B. R. 73; 181 Fed. 899.  
 In re Hines, 9 Am. B. R. 27; 117 Fed. 790.  
 Exemption laws to be liberally construed.  
 In re Tilden, 1 Am. B. R. 300; 91 Fed. 500.  
 In re Thedford, 28 Am. B. R. 191.  
 Duncan v. Ferguson-McKinney Dry Goods Co. (C. C. A. 5th Cir.), 18 Am. B. R. 155; 150 Fed. 269; 80 C. C. A. 157.  
 Right of bankrupt thereto.  
 In re Brown, 4 Am. B. R. 46; 100 Fed. 441.  
 In re Waxelbaum, 4 Am. B. R. 120; 101 Fed. 228.  
 In re Stephens, 8 Am. B. R. 53; 114 Fed. 192.  
 In re Hines, 9 Am. B. R. 27; 117 Fed. 790.  
 In re Bean, 4 Am. B. R. 53; 100 Fed. 262.  
 In re Renda (D. C. Pa.), 17 Am. B. R. 521; 149 Fed. 614.  
 Alien claimant.  
 In re Kaplan (D. C. Miss.), 24 Am. B. R. 376; 186 Fed. 242.  
 Determined as of the time of his adjudication.  
 In re Fletcher, 16 Am. B. R. 491.  
 In re Rainwater, 25 Am. B. R. 419; 191 Fed. 738.  
 In re Donahey (D. C. Pa.), 23 Am. B. R. 796; 176 Fed. 458.  
 Exemptions after discharge out of subsequently discovered assets not allowed.  
 In re Irwin (C. C. A. 3rd Cir.), 23 Am. B. R. 487; 174 Fed. 642; 98 C. C. A. 396.  
 Personal to bankrupt and is deemed waived if not asserted.  
 In re Bolinger, 6 Am. B. R. 171; 108 Fed. 374.  
 In re Sloan, 14 Am. B. R. 435; 135 Fed. 873.  
 In re Blanchard and Howard (D. C. N. Car.), 20 Am. B. R. 422; 161 Fed. 797.  
 Failure to claim exemptions does not estop.  
 Goodman v. Curtis, 23 Am. B. R. 504; 174 Fed. 644; 98 C. C. A. 398.  
 In re Maxson (D. C. Ia.), 22 Am. B. R. 424; 170 Fed. 356.  
 Waiver.  
 In re Reinhart, 12 Am. B. R. 78; 129 Fed. 510.  
 In re Osborn (D. C. N. Y.), 5 Am. B. R. 111; 104 Fed. 780.  
 In re Kaufmann (D. C. Wis.), 16 Am. B. R. 118.



In re Pfeiffer (D. C. Pa.), 19 Am. B. R. 230; 155 Fed. 892.

In re Bolinger (*supra*).

Failure of bankrupt to claim exemption of wages earned prior to his adjudication constitutes a waiver.

In re Harrington (D. C. N. Y.), 29 Am. B. R. 666; 200 Fed. 1010.

Rights of execution creditor holding waiver.

In re Baughman (D. C. Pa.), 25 Am. B. R. 167; 183 Fed. 668.

May waive, but not assign.

In re Pfeiffer (D. C. Pa.), 19 Am. B. R. 230; 155 Fed. 892.

A claim of exemption in general not sufficient.

In re Exum, 31 Am. B. R. 691; 209 Fed. 716.

Burden of proof as to exemptions on bankrupt.

In re Turnbull, 5 Am. B. R. 549; 106 Fed. 666.

McGahan v. Anderson, 7 Am. B. R. 641; 113 Fed. 115; 51 C. C. A. 92.

Payment from proceeds of sale.

In re Zack, 28 Am. B. R. 138.

Dunlap Hardware Co. v. Huddleston (C. C. A. 5th Cir.), 21 Am. B. R. 731; 167 Fed. 433; 93 C. C. A. 69.

**Time and manner of claiming.**

In re McClintock, 13 Am. B. R. 606.

Seedig v. First Nat. Bank of Clifton (Tex. Ct. Civ. App.), 33 Am. B. R. 99.

An extension of time for filing schedules extends bankrupt's time for claiming exemptions.

In re O'Hara (D. C. Pa.), 20 Am. B. R. 714; 162 Fed. 325.

Amending schedules so as to benefit particular creditor not permitted.

In re Merry, 29 Am. B. R. 829; 201 Fed. 369.

**Property set apart as exempt forms no part of estate in bankruptcy.**

Lockwood v. Exchange Bank, 10 Am. B. R. 107; 190 U. S. 294; 47 L. Ed. 1061.

In re Brumbaugh, 12 Am. B. R. 204; 128 Fed. 971. Jewett v. Huffman, 13 Am. B. R. 738.

In re Bender (D. C. O.), 17 Am. B. R. 895. McKenny v. Cheny, 11 Am. B. R. 54.

In re Hill, 2 Am. B. R. 798; 96 Fed. 185.

In re Yeager (D. C. Pa.), 25 Am. B. R. 51; 182 Fed. 951.

In re Rising, 27 Am. B. R. 519.

In re MacKissac, 22 Am. B. R. 817; 171 Fed. 279.

Gregory Co. v. Bristol (In re Cale) (C. C. A. 8th Cir.), 26 Am. B. R. 938; 191 Fed. 31; 111 C. C. A. 89.

A trustee may not recover, as a preference, exempt property or the proceeds thereof, transferred by the bankrupt within the four months period.

Vitzthum v. Large (D. C. Ia.), 20 Am. B. R. 666; 162 Fed. 685

**Application of Sec. 67-f.**

Provisions of Sec. 67-f do not defeat rights in exempt property acquired by contract or waiver and these may be enforced or foreclosed by judgments obtained after petition in bankruptcy was filed.

C., B. and Q. R. R. Co. v. Hall (U. S. Sup.), 30 Am. B. R. 619; 229 U. S. 511; 57 L. Ed. 1306; aff'g Hall v. C., B. and Q. R. R. Co., 25 Am. B. R. 53; 88 Neb. 20.

In re Forbes (C. C. A. 9th Cir.), 26 Am. B. R. 355; 186 Fed. 79.

*Contra.* Jewett Bros. v. Huffman, 13 Am. B. R. 738.

Compare In re Downing, 15 Am. B. R. 423; 148 Fed. 120.

In re Snyder, 32 Am. B. R. 500; 216 Fed. 989.

Court of bankruptcy has jurisdiction to determine the merits of a bankrupt's claim to exemptions.

In re Castleberry, 16 Am. B. R. 159; 143 Fed. 1018. In re Camp, 1 Am. B. R. 165; 91 Fed. 745.

In re Hatch, 4 Am. B. R. 349; 102 Fed. 280.

Ingram v. Wilson, 11 Am. B. R. 192; 125 Fed. 913.

In re Lucius, 10 Am. B. R. 653; 124 Fed. 455 and cases cited. McGahan v. Anderson (C. C. A. 4th Cir.), 7 Am. B. R. 641; 113 Fed. 115; 51 C. C. A. 92.

In re Mackissie, 22 Am. B. R. 817; 171 Fed. 259.

In re Remmerde, 30 Am. B. R. 701; 206 Fed. 822.

Enforcement of order.

In re Hartsell, 15 Am. B. R. 177; 140 Fed. 30. In re Castleberry (*supra*).

Liability of exempt property for costs and fees.

In re Castleberry (*supra*).

In re Bean (*supra*).

In re Hines (D. C. W. Va.), 9 Am. B. R. 27; 117 Fed. 790.

As affecting stay of discharge.

In re Mitchell, 23 Am. B. R. 707; 175 Fed. 877.

#### Effect of concealment of assets.

Bankrupt forfeits.

In re Schafer (D. C. Pa.), 18 Am. B. R. 361; 151 Fed. 505.

In re Ansley Bros. (D. C. N. Car.), 18 Am. B. R. 457; 153 Fed. 983.

In re Alex (D. C. Pa.), 15 Am. B. R. 450; 141 Fed. 483.

In re Leverton (D. C. Pa.), 19 Am. B. R. 426; 155 Fed. 925.

In re Taylor (D. C. Colo.), 7 Am. B. R. 410; 114 Fed. 607.

In re Yost (D. C. Pa.), 9 Am. B. R. 153; 117 Fed. 792.

In re Evans (D. C. N. Car.), 8 Am. B. R. 730; 116 Fed. 909.

In re Denson, 28 Am. B. R. 162; 195 Fed. 857.

In re Cochran (D. C. Ga.), 26 Am. B. R. 459; 185 Fed. 913.

In re Gerber (C. C. A. 9th Cir.), 26 Am. B. R. 608; 186 Fed. 693; 108 C. C. A. 511.

*Contra.* In re Park (D. C. Ark.), 4 Am. B. R. 432; 102 Fed. 602.

In re Rothschild (D. C. Ga.), 6 Am. B. R. 43.

Not allowed out of voidable preference surrendered or recovered.

In re Wishniefsky (D. C. N. J.), 24 Am. B. R. 798; 181 Fed. 896.

Right to exemptions in property purchased with intent of not paying therefor.

In re Hammond, 28 Am. B. R. 811.

Denied because of false statement to agency.

In re Peacock (D. C. Ga.), 30 Am. B. R. 179; 203 Fed. 191.

In re Dobbs, 22 Am. B. R. 801; 175 Fed. 319.

#### Practice on exemptions.

Schedule of exemptions.

In re McClintock, 13 Am. B. R. 607.

Lipman v. Stein (C. C. A. 3rd Cir.), 14 Am. B. R. 30; 134 Fed. 235; 67 C. C. A. 17; aff'g 12 Am. B. R. 384. Burke v. Guarantee Title & Trust Co. (C. C. A. 3rd Cir.), 14 Am. B. R. 31; 134 Fed. 562; 67 C. C. A. 486.

In re Groves (D. C. O.), 6 Am. B. R. 728.

In re Luby, 18 Am. B. R. 801; 155 Fed. 659.

In re J. E. Maynard & Co. (D. C. Ga.), 25 Am. B. R. 732; 183 Fed. 823.

Claim in alternative.

In re Kelly, 28 Am. B. R. 730; 199 Fed. 984.

Petition of bankrupt for payment of exemptions in cash.

In re Andrews & Simonds (D. C. Mich.), 27 Am. B. R. 116; 193 Fed. 776.

Amendment of bankrupt's schedule as to exemptions permitted.

In re White, 11 Am. B. R. 556; 128 Fed. 513.

In re Duffy, 9 Am. B. R. 358; 118 Fed. 926.

In re Fisher (D. C. Va.), 15 Am. B. R. 652; 142 Fed. 205.

Goodman v. Curtis (C. C. A. 5th Cir.), 23 Am. B. R. 504; 174 Fed. 644; 98 C. C. A.

398.

In re Maxson (D. C. Ia.), 22 Am. B. R. 424; 170 Fed. 356.

Must be seasonably made.

In re Von Kern (D. C. Pa.), 14 Am. B. R. 403; 135 Fed. 447.

In re Nunn (D. C. Ga.), 2 Am. B. R. 664.

In re Sharr, 15 Am. B. R. 491.

In re Neal (D. C. O.), 14 Am. B. R. 550.

In re Wilson, 6 Am. B. R. 287; 108 Fed. 197.

In re White (*supra*).

**Trustee's rights and duties as to exemptions.**

In re Friedrich, 3 Am. B. R. 801; 100 Fed. 284.

In re Manning (D. C. Pa.), 7 Am. B. R. 571; 112 Fed. 948.

In re Reese, 8 Am. B. R. 411; 115 Fed. 993.

In re Groves, 6 Am. B. R. 728.

In re Brown, 4 Am. B. R. 46; 100 Fed. 441.

In re Campbell (D. C. Va.), 10 Am. B. R. 723; 124 Fed. 417.

In re Ellis, 10 Am. B. R. 754.

In re Soper (D. C. Neb.), 22 Am. B. R. 868; 173 Fed. 116.

In re Finklestein (D. C. Pa.), 27 Am. B. R. 229; 192 Fed. 738.

Duty of trustee to set apart when State law permits exemptions in partnership property.

In re Andrews and Simonds (D. C. Mich.), 27 Am. B. R. 116; 193 Fed. 776.

Should report within 20 days after appointment.

In re McClintock (D. C. O.), 13 Am. B. R. 606.

On exceptions by trustee to bankrupts' exemptions, testimony of witnesses other than the bankrupt not admissible.

In re Siskind, 32 Am. B. R. 69.

No notice to creditors required upon hearing on objections to trustee's report.

Sheridan State Bank v. Rowell, 32 Am. B. R. 747; 212 Fed. 529.

Creditor may except to report.

In re White, 4 Am. B. R. 613; 103 Fed. 774.

In re Campbell (D. C. Va.), (*supra*).

Exceptions filed more than 20 days after the filing of trustee's report on exemptions are too late.

In re Amos (D. C. Ga.), 19 Am. B. R. 804.

See, as to adding new grounds of objection after 20 days.

In re Cotton & Preston (D. C. Ga.), 23 Am. B. R. 586; and s. c., 25 Am. B. R. 532; 183 Fed. 190.

Bankrupt also may except to trustee's report.

In re Ellis (D. C. O.), (*supra*).

No jury trial of question under Sec. 19.

In re Thedford, 27 Am. B. R. 354 and cases cited.

**Notes containing waiver.**

Personal to creditor favored.

In re Black, 4 Am. B. R. 776; 104 Fed. 28.

In re Tune, 8 Am. B. R. 285; 115 Fed. 906.

Zumpfe v. Schultz, 20 Am. B. R. 916; 35 Pa. Super. Ct. 106.

In re Meredith (D. C. Ga.), 16 Am. B. R. 331; 144 Fed. 230.

Bankrupt's right to, not affected by fact that he had given notes containing a waiver thereof.

In re Goodman (Goodman v. Curtis), 23 Am. B. R. 504; 174 Fed. 644; 98 C. C. A. 398.

In re Loden (D. C. Ga.), 25 Am. B. R. 917; 184 Fed. 965.

#### **Partnership Assets.**

In South Dakota no right of exemption in partnership assets.

In re Novak (D. C. S. Dak.), 18 Am. B. R. 236; 150 Fed. 602. In re Abrams, 34 Am. B. R. 552.

In re I. S. Vickerman & Co. (D. C. S. Dak.), 29 Am. B. R. 298; 199 Fed. 589.

So in New Jersey, Maryland, Pennsylvania, Oklahoma and Arkansas. In re Prince & Walter (D. C. Pa.), 12 Am. B. R. 675; 131 Fed. 546; In re Demarest (D. C. N. J.), 6 Am. B. R. 232; 110 Fed. 638. In re Rushmore, 24 Am. B. R. 55.

In Washington. In re Phillips, 31 Am. B. R. 597; 209 Fed. 490.

In re Scheier, 26 Am. B. R. 739; 188 Fed. 744.

Jennings v. Wm. A. Stannus & Son (C. C. A. 9th Cir.), 27 Am. B. R. 384, 386; 191 Fed. 347; 112 C. C. A. 91.

In re Beauchamp (D. C. Md.), 4 Am. B. R. 151; 101 Fed. 106.

In re Golden Rule Mercantile Co. (D. C. Okla.), 21 Am. B. R. 397.

North Carolina rule.

In re J. M. Monroe & Co. (D. C. N. Car.), 19 Am. B. R. 255; 156 Fed. 216.

In re Fowler & Co. (D. C. N. Car.), 16 Am. B. R. 580; 145 Fed. 270.

In re Gartner Hancock Lumber Co., 22 Am. B. R. 898; 173 Fed. 153.

Georgia rule.

In re Rutland Grocery Co., 26 Am. B. R. 942; 189 Fed. 765.

In re Camp, 1 Am. B. R. 165; 91 Fed. 745.

Michigan rule.

In re Andrews & Simonds, 27 Am. B. R. 116; 193 Fed. 776.

Mississippi rule.

In re H. W. Bundy & Co., 33 Am. B. R. 289; 218 Fed. 711.

Payment from assets of dissolved partnership.

In re Kolber (D. C. Pa.), 27 Am. B. R. 414.

In re Rudnick (D. C. Wash.), 4 Am. B. R. 531; 102 Fed. 750.

#### **As affected by kind of property claimed.**

Cases very numerous and differ largely in the various states; wearing apparel. Implements of trade, household furniture to limited amount are exempt in most states.

Page v. Edmunds, 9 Am. B. R. 277; 187 U. S. 596; 47 L. Ed. 318.

In re Herbold, 14 Am. B. R. 116.

(Wearing apparel), In re Stokes (D. C. N. Y.), 4 Am. B. R. 560.

In re Leech (C. C. A. 6th Cir.), 22 Am. B. R. 599; 171 Fed. 622; 96 C. C. A. 424.

As to crops, see,

In re Sullivan (Ia.) (C. C. A. 8th Cir.), 17 Am. B. R. 578; 148 Fed. 815; 78 C. C. A. 505; aff'g 16 Am. B. R. 87; 142 Fed. 620.

Olmsted-Stevenson Co. v. Miller (C. C. A. 9th Cir.) 36 Am. B. R. 816.

Pension money.

In re Bean, 4 Am. B. R. 53, 100 Fed. 262.

In re Stout, 6 Am. B. R. 505; 109 Fed. 794.

In re Ellithorpe, 7 Am. B. R. 18; 111 Fed. 163.

Insurance policies.

In re Phelps (D. C. N. Y.), 15 Am. B. R. 170.

In re Scheld (C. C. A. 9th Cir.), 5 Am. B. R. 102; 104 Fed. 870; 44 C. C. A. 233.

Steele v. Buel (C. C. A. 8th Cir.), 5 Am. B. R. 165; 104 Fed. 968; 44 C. C. A. 287.



In re White (C. C. A. 2nd Cir.), 23 Am. B. R. 90; 174 Fed. 333; 98 C. C. A. 295.  
 Goodman v. Curtis (C. C. A. 5th Cir.), 23 Am. B. R. 504; 174 Fed. 644; 98 C. C. A.

288.

### Homesteads.

In re Rhodes, 6 Am. B. R. 173.

In re Tollett, 5 Am. B. R. 404; 106 Fed. 866.

In re Buelow, 3 Am. B. R. 389; 98 Fed. 86.

In re Gibbs, 4 Am. B. R. 619; 103 Fed. 782.

In re Paramore & Ricks (D. C. N. Car.), 19 Am. B. R. 126; 156 Fed. 208.

In re Fisher (D. C. Va.), 15 Am. B. R. 652; 142 Fed. 205.

In re Barrett (D. C. Ore.), 16 Am. B. R. 46.

Cowan v. Burchfield (D. C. Ala.), 25 Am. B. R. 293; 180 Fed. 614.

Newberry Shoe Co. v. Collier, 25 Am. B. R. 130.

When purchase price of homestead is unpaid.

In re Nunemaker (D. C. O.), 30 Am. B. R. 697; 208 Fed. 491.

Brandt, Trustee v. Mayhew (C. C. A. 9th Cir.), 33 Am. B. R. 845; 218 Fed. 422; 134 C. C. A. 210.

In re Anderson (D. C. Ga.), 35 Am. B. R. 487; 224 Fed. 790.

In re Youngstrom (C. C. A. 8th Cir.), 18 Am. B. R. 572; 153 Fed. 98; 82 C. C. A. 232.

In re Jeffers (D. C. Ga.), 17 Am. B. R. 368.

In re Sale (C. C. A. 6th Cir.), 16 Am. B. R. 235; 143 Fed. 310; 74 C. C. A. 448.

In re Letson (Okla.) (C. C. A. 8th Cir.), 19 Am. B. R. 506; 157 Fed. 78; 84 C. C. A. 582.

Sullivan et al. v. Mussey (C. C. A. 5th Cir.), 25 Am. B. R. 781; 184 Fed. 60; 107 C. C. A. 78; aff'g In re Mussey (D. C. Tex.), 25 Am. B. R. 91; 179 Fed. 1007.

Homestead in hotel building under Washington statute.

In re Robison, 33 Am. B. R. 27; 215 Fed. 662.

Care and protection of dependent female. (Law of Georgia).

In re Glisson, 25 Am. B. R. 911; 182 Fed. 287.

When a judgment recovered against a bankrupt is a valid lien upon part of a homestead set apart as exempt, the subsequent discharge of the bankrupt does not annul or extinguish the judgment except so far as it imposes a personal liability upon the bankrupt.

Gregory Co. v. Cale (Minn. Sup. Ct.), 27 Am. B. R. 131.

Transfer of homestead by debtor to a creditor may not be avoided by his trustee in bankruptcy since homestead being exempt would not have passed to trustee.

Huntington, Trustee v. Baskerville (C. C. A. 8th Cir.), 27 Am. B. R. 219; 192 Fed. 813; 113 C. C. A. 137.

Lockwood v. Exchange Bank, 10 Am. B. R. 107; 190 U. S. 294 and cases cited; 47 L. Ed. 1061.



**FORM No. 113.****CERTIFICATE OF FALSITY OF PAUPER AFFIDAVIT.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER	}	No. ....
OF		
..... <i>Bankrupt.</i>		

I, ....., referee in bankruptcy in charge of the above entitled proceeding, do hereby certify:

That I have reason to believe that the pauper affidavit filed herein by the above named bankrupt, as provided in Sec. 51-a (2) of the bankruptcy law of 1898, is false; and I do, therefore, set the ..... day of ....., 19..., at .... M., as the time, and ....., in the ..... of ....., in said district, as the place, when said bankrupt shall be examined as to the truth of such affidavit.

Dated ....., 19...

.....,  
*Referee in Bankruptcy.*

To ....., bankrupt:

You are hereby ordered to appear before the undersigned, for examination, at the time and place specified in the above certificate.

Dated ....., 19...

.....,  
*Referee in Bankruptcy.*

**NOTES.**

**Petition in forma pauperis. Sec. 51-a, (2).**

**General order XXXV, (4).**

**Affidavit. In re Levy, 4 Am. B. R. 108; 101 Fed. 247.**

**Shlers v. Bell (C. C. A. 5th Cir.), 2 Am. B. R. 529; 94 Fed. 801; 36 C. C. A. 502.**

No law or rule authorizing referee to require bankrupt to pay the statutory fees before he is given his discharge.

**In re Plimpton, 4 Am. B. R. 614; 103 Fed. 775.**

**FORM No. 114.**

**ORDER THAT TRUSTEE TRANSFER COPYRIGHT.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p>IN THE MATTER</p> <p>OF</p> <p>.....</p> <p><i>Bankrupt.</i></p>
---

Upon reading and filing the petition of ....., verified the ..... day of ..... 19..., the notice of motion herein with proof of due service thereof upon ....., as trustee in bankruptcy of ....., the above named bankrupt, and the affidavit of the said trustee duly verified, whereby it appears that the copyright of the book ..... was registered in the name of ....., the bankrupt herein, but that the title thereto by the terms of the contract, is now vested in the said ....., the author of said book.

Now, on motion of ....., attorney for ....., and there being no opposition thereto, it is

Ordered, that ....., as trustee aforesaid, be and he hereby is authorized and directed to assign, transfer and set over unto the said ....., all his right, title and interest in and to the copyright of said book entitled .....

Dated ....., 19...

.....  
*Referee.*

## FORM No. 115.

**PETITION FOR MEETING OF CREDITORS TO CONSIDER PROPOSED COMPROMISE.**

United States District Court,

for the ..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

To ....., Esq., Referee in Bankruptcy.

The petition of ..... respectfully shows:

1. That your petitioner is the trustee herein, duly qualified and acting.
2. That among the assets coming into the hands of your petitioner is a certain claim consisting of:.....  
.....  
against ..... of ..... That your petitioner has made efforts to collect said claim, has presented same and demanded payment thereof. That payment was refused by the said ..... on the following grounds, to wit:  
.....  
.....

3. That after considerable negotiation, your petitioner has succeeded in obtaining an offer of \$...... from said ..... in full settlement of your petitioner's claim against him. That your petitioner has fully investigated the claim, and verily believes that it is to the best interests of this estate to accept the amount offered, and petitioner recommends a compromise of the claim upon the terms offered.

Wherefore, your petitioner prays that a meeting of creditors be called upon ten days' notice, to consider a proposed compromise of the controversy of the claim against .....

.....,  
*Petitioner.*

[Verification.]

NOTES.

**Compromise of controversy. Sec. 27.**

**Cross-references, Secs. 2, (7), 26, 58-a, (7), b, c.**

**General orders XXVIII, XXXII.**

Subject matter of controversy and reasons for compromise should be clearly set forth.

In re Phelps, 3 Am. B. R. 396.

Compromise must be with the approval of the court.

Action of creditors thereon not final.

In re Heyman, 5 Am. B. R. 808; 104 Fed. 677.

When disapproved.

Riley v. Pope, 26 Am. B. R. 618; 186 Fed. 857.

May not compromise and settle suit to the prejudice of attorney's lien for services.

In re Adamo (D. C. N. Y.), 18 Am. B. R. 180; 151 Fed. 716.

Bankrupt may not enjoin trustee from effecting a compromise.

In re Kranich, 23 Am. B. R. 550; 174 Fed. 908.

**FORM No. 116.**

**NOTICE TO CREDITORS OF SPECIAL MEETING.**

In the District Court of the United States,

for the ..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No.....

*Bankrupt.*

To the creditors of ....., of ....., in the county of....., and district aforesaid, a bankrupt:

Notice is hereby given that on the ..... day of ....., 19..., at ..... o'clock, .. M., there will be a meeting of the creditors of the said bankrupt, at ....., in the ..... of ....., in said district for the following purposes:

[Here set forth brief statement of object of meeting as for example, "To consider a proposed compromise of a controversy between the trustee herein and ..... concerning ..... on the following terms:"]

To transact such other business as may properly come before said meeting.

Dated ....., 19...

.....  
*Referee in Bankruptcy.*

**FORM No. 117.**

**ORDER AUTHORIZING COMPROMISE.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER

OF

.....

*Bankrupt.*

Upon reading and filing the petition of ....., trustee herein, duly verified, praying for authority to compromise a controversy with..... and all the proceedings heretofore had herein, and a meeting of creditors having been duly held before the referee herein on ten days' notice, to consider the proposed compromise of the controversy with the said ....., and no objections having been filed and no one having appeared in opposition thereto,

Now, on motion of ....., attorney for the said trustee, it is Ordered, that ....., the trustee herein, be and he hereby is authorized to settle and compromise the controversy with ....., of the City of ....., for the sum of \$....., and the said trustee is authorized to execute the necessary papers to carry out said compromise.

Dated ....., 19...  
.....,  
*Referee in Bankruptcy.*



FORM No. 118.

**PETITION FOR MEETING OF CREDITORS TO INDEMNIFY TRUSTEE.**

United States District Court,

for the ..... District of .....

In Bankruptcy.

IN THE MATTER

OF

.....  
*Bankrupt.*

To ....., Esq., Referee in Bankruptcy.

The petition of ..... respectfully shows to the court:

1. That your petitioner is the trustee in bankruptcy in the above entitled proceeding, having been duly appointed such trustee on the ..... day of ....., 19..., and having thereafter duly qualified by filing the required bond, and is now acting as such trustee.

2. That your petitioner, through his attorney, conducted an examination of the bankrupt and his wife, and based upon the testimony adduced at such examination, brought an action in the ..... court, ..... County, for the purpose of setting aside certain preferential transfers. That your petitioner was also substituted as party-plaintiff in an action pending in the ..... Supreme Court, ..... County against .....: said action being for an accounting with reference to the partnership heretofore existing between the said ..... and the bankrupt herein. That your petitioner has been ordered by the court in this proceeding to file security for costs, and cannot proceed with said action until same has been filed.

3. Your petitioner has no cash nor assets, other than said claim, in his hands, and feels that he should be indemnified both as to such security already demanded and for his costs and expenses in carrying on this litigation, and your petitioner believes and has been advised by counsel that the sum of \$....., which should be furnished before requiring petitioner to proceed further with the litigation, would be a just and equitable indemnity.

Wherefore, your petitioner prays that a meeting of creditors be called herein and that said creditors be cited to show cause why they should not furnish proper indemnity to the trustee, or why your petitioner should not be permitted to discontinue the aforesaid actions in the event of the creditors failing to indemnify him in the amount above set forth.

.....  
*Petitioner.*

[Verification.]

## FORM No. 119.

**PETITION THAT BANKRUPT TURN OVER CONCEALED ASSETS UPON  
SUMMARY ORDER.**

United States District Court,

for the ..... District of .....:

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

To ....., Esq., Referee in Bankruptcy.

The petition of ....., respectfully shows:

1. That he is the trustee herein duly qualified and acting.
2. Petitioner respectfully alleges that through his attorney, he has examined the bankrupt and other witnesses in this proceeding and thoroughly investigated the books of the bankrupt and the circumstances connected with this bankruptcy.

3. Petitioner alleges, upon information and belief, that ..... the said bankrupt has in his possession or under his control the following property belonging to his said estate in bankruptcy:.....

That the said bankrupt is fraudulently concealing same from your petitioner as trustee.

4. That said property so concealed amounts in value to at least \$.....
5. That the sources of petitioner's knowledge and the grounds of his belief as to this property are as follows:

[Here specify fully.]

6. No previous application has been made for an order herein.

Wherefore, your petitioner prays for an order directing the bankrupt to turn over and deliver forthwith to your petitioner, all of such property or moneys so concealed, and for such other and further relief as may be just and proper.

.....  
*Petitioner.*

[Verification.]

NOTES.

**"Turn over" motions.—Jurisdiction.**

An order requiring a bankrupt to surrender assets in his possession or control is **not** an order for payment of a debt.

*Samel v. Dodd* (C. C. A. 5th Cir.), 16 Am. B. R. 163; 142 Fed. 68; 73 C. C. A. 254.

*In re Epstein* (D. C. Pa.), 15 Am. B. R. 711.

*In re Schlesinger* (D. C. N. Y.), 3 Am. B. R. 342; 97 Fed. 930.

*In re Gerstel* (D. C. Ill.), 10 Am. B. R. 411; 123 Fed. 166.

*In re McCormick* (D. C. N. Y.), 3 Am. B. R. 340; 97 Fed. 566.

Jurisdiction of referee.

*In re Logan* (D. C. N. Y.), 28 Am. B. R. 543; 196 Fed. 678.

When bankrupt is not informed that order is sought.

*In re Atwater* (D. C. N. Y.), 36 Am. B. R. 109; 227 Fed. 511.

*In re Rosser* (C. C. A. 8th Cir.), 4 Am. B. R. 153; 101 Fed. 562; 41 C. C. A. 497.

What does not constitute a waiver of jurisdiction.

*In re Bacon* (C. C. A. 2nd Cir.), 31 Am. B. R. 777; 210 Fed. 129; 126 C. C. A. 643; aff'g s. c 28 Am. B. R. 565.

**No extra-territorial jurisdiction.**

*In re Geller* (D. C. N. Y.), 32 Am. B. R. 629; 216 Fed. 558.

*In re Rathfon Bros.* (D. C. Mich.), 29 Am. B. R. 22; 200 Fed. 108.

*Robertson v. Howard* (U. S. Sup.), 30 Am. B. R. 611; 229 U. S. 254; 57 L. Ed. 1174.

*In re Boston-Cerrilos Mines Corp.* (D. C. N. M.), 30 Am. B. R. 739; 206 Fed. 794.

*In re Heintz* (C. C. A. 6th Cir.), 29 Am. B. R. 19; 201 Fed. 338; 119 C. C. A. 576.

**Bankrupt's denial of possession of the property not conclusive.**

*In re Schachter*, 9 Am. B. R. 497; 119 Fed. 1010.

*In re Frankfort* (*infra*).

**Recent possession of property.**

*Good v. Kane* (C. C. A. 8th Cir.), 32 Am. B. R. 19; 211 Fed. 956; 128 C. C. A. 454.

*Kirsner v. Taliaferro* (C. C. A. 4th Cir.), 29 Am. B. R. 832; 202 Fed. 51; 120 C. C.

A. 305.

*In re Ricciardelli* (D. C. N. J.), 35 Am. B. R. 35; 224 Fed. 638.

*In re Dixon* (D. C. Mass.), 35 Am. B. R. 482; 224 Fed. 624.

*In re Silverman*, 30 Am. B. R. 798; 206 Fed. 960.

When evidence sufficient to warrant order.

*In re Averick* (D. C. Pa.), 22 Am. B. R. 518; 170 Fed. 521.

*In re Adler* (D. C. Okla.), 21 Am. B. R. 371; 170 Fed. 634.

*In re Reese* (D. C. Pa.), 22 Am. B. R. 521; 170 Fed. 986.

Effect of financial statement.

*In re Belluscio* (D. C. N. Y.), 25 Am. B. R. 660.

**Practice.**

Application usually by trustee's petition to referee direct; may be made to judge and referred to a special master.

*In re Herskowitz* (D. C. N. Y.), 18 Am. B. R. 247; 152 Fed. 316.

*In re Rothschild*, 5 Am. B. R. 587.

Petition should contain definite allegations so that bankrupt may know what he is called upon to deliver or "turn over."

*In re Greer*, 26 Am. B. R. 811; 189 Fed. 511.

Use of a demurrer not proper practice.

*In re Snelling* (D. C. Mass.), 29 Am. B. R. 817; 202 Fed. 258.

See, *In re Mullen*, 4 Am. B. R. 224; 101 Fed. 413.

*In re Berkman*, 201 Fed. 180.

A distinct issue should be made by petition and answer.

*In re Lasch*, 12 Am. B. R. 158.

*In re Pearson*, 2 Am. B. R. 819.

*In re Friedman*, 1 Am. B. R. 510.

Where petition is indefinite or uncertain in its averments the referee does not lose jurisdiction, but a motion that it be made more definite and certain is proper remedy.

*In re Frank* (C. C. A. 8th Cir.), 25 Am. B. R. 486; 182 Fed. 794; 105 C. C. A. 226.

#### Degree of proof required, "Beyond reasonable doubt."

*In re Frankfort* (D. C. N. Y.), 15 Am. B. R. 210; 144 Fed. 721.

*In re Weinreb* (C. C. A. 2nd Cir.), 16 Am. B. R. 702; 146 Fed. 243; 76 C. C. A. 609.

*In re Alphin and Lake Cotton Co.*, 14 Am. B. R. 194; 134 Fed. 477.

*In re Leinweber* (D. C. Conn.), 12 Am. B. R. 175; 128 Fed. 641.

*In re Feldser* (D. C. Pa.), 14 Am. B. R. 216; 134 Fed. 307.

*In re Gerstel* (*supra*). *In re Adler*, 12 Am. B. R. 19; 129 Fed. 902.

*In re Kane*, 10 Am. B. R. 478; 125 Fed. 984.

*In re Felson*, 10 Am. B. R. 716; 124 Fed. 288. *In re Mize*, 22 Am. B. R. 577; 172 Fed. 945.

#### Court must be satisfied of bankrupt's present ability to comply.

*In re Davison*, 16 Am. B. R. 337; 143 Fed. 673.

*In re Cole* (C. C. A. 1st Cir.), 16 Am. B. R. 302; 144 Fed. 392; 75 C. C. A. 330; *mod'g* 14 Am. B. R. 389; 135 Fed. 439.

*American Trust Co. v. Wallis* (C. C. A. 3rd Cir.), 11 Am. B. R. 360; 126 Fed. 464; 61 C. C. A. 342.

*In re Stavrah*n (C. C. A. 2nd Cir.), 23 Am. B. R. 168; 174 Fed. 330; 98 C. C. A. 202.

*In re Cramer*, 23 Am. B. R. 637; 175 Fed. 879.

*In re Tudor*, 2 Am. B. R. 808; 96 Fed. 942.

*In re Mize* (*supra*).

*In re Reynolds* (D. C. Ala.), 27 Am. B. R. 200; 190 Fed. 967; *aff'd*, *Stuart v. Reynolds*, 204 Fed. 709; 123 C. C. A. 13.

*Epstein v. Steinfeld* (C. C. A. 3rd Cir.), 32 Am. B. R. 6; 210 Fed. 236; 127 C. C. A. 54; *aff'g* *In re Epstein*, 30 Am. B. R. 387; 206 Fed. 568.

Bankrupt held deprived of his legal rights.

*In re Frank* (*supra*).

When not granted.

*In re LaPlume Condensed Milk Co.* (D. C. Pa.), 16 Am. B. R. 729; 145 Fed. 1013.

*In re Walder* (D. C. Conn.), 16 Am. B. R. 41; 142 Fed. 784.

*In re Longbottom and Sons*, 15 Am. B. R. 437; 142 Fed. 291.

*In re Sax* (D. C. Pa.), 15 Am. B. R. 455; 141 Fed. 223.

*In re Graning* (C. C. A. 2nd Cir.), 36 Am. B. R. 162.

#### What order should provide.

It is error to embody in the order what is substantially a judgment for contempt and an alternative order of committal therefor. The issue on the question of contempt is entirely separate.

*In re Cole*, 16 Am. B. R. 302; 144 Fed. 392; 75 C. C. A. 330; *rev'g* 14 Am. B. R. 389; 135 Fed. 439.

*In re Baum* (C. C. A. 8th Cir.), 22 Am. B. R. 295; 169 Fed. 410; 94 C. C. A. 632.

Order should require payment to the trustee.

*In re Baum* (*supra*).



**Sufficiency of.**

In re Kramer (D. C. Pa.), 31 Am. B. R. 377; 209 Fed. 627.

In re Pennell, 32 Am. B. R. 241; 214 Fed. 337; 130 C. C. A. 645.

Upon a bankrupt's petition to review an order adjudging him in contempt for failure to obey an order to turn over assets to his trustee, the latter order is not reviewable.

In re Lans (C. C. A. 2nd Cir.), 19 Am. B. R. 458; 158 Fed. 610; 85 C. C. A. 432.

Order refusing to direct delivery, is not *res adjudicata* upon subsequent plenary action.

Murray v. Joseph (D. C. N. Y.), 16 Am. B. R. 704; 146 Fed. 260.

Bankrupt's testimony at meeting of creditors may be admissible in "turn over proceeding."

In re Greer (D. C. Ark.), 26 Am. B. R. 811; 189 Fed. 511.

Good v. Kane (C. C. A. 8th Cir.), 32 Am. B. R. 19; 211 Fed. 956; 128 C. C. A. 454.

**Recovery from third persons.**

When it is clear that third person's possession is merely colorable.

In re Friedman (C. C. A. 2nd Cir.), 20 Am. B. R. 37; 161 Fed. 260; 88 C. C. A. 306; aff'g 18 Am. B. R. 712; 153 Fed. 939.

In re Moore, 5 Am. B. R. 151; 104 Fed. 869.

In re Blum (C. C. A. 7th Cir.), 29 Am. B. R. 332; 193 Fed. 304.

In re Meier (C. C. A. 8th Cir.), 25 Am. B. R. 272; 182 Fed. 790; 105 C. C. A. 231.

Determining whether claim is adverse or colorable—jurisdiction to proceed further.

In re Hayden (D. C. Mass.), 22 Am. B. R. 764; 172 Fed. 623.

In re Mimms & Parham (D. C. Ky.), 27 Am. B. R. 469; 193 Fed. 276.

In re Ironclad Mfg. Co. (C. C. A. 2nd Cir.), 27 Am. B. R. 490; 191 Fed. 831; 112 C. C. A. 345.

In re Peacock, 24 Am. B. R. 159; 178 Fed. 851.

In re Gill (C. C. A. 8th Cir.), 26 Am. B. R. 883; 190 Fed. 726; 111 C. C. A. 454.

Taken under a void attachment.

In re Graessler & Reichwald (C. C. A. 9th Cir.), 18 Am. B. R. 694; 154 Fed. 478; 83 C. C. A. 304.

Where only question of law is raised.

In re Michaelis & Lindeman (D. C. N. Y.), 27 Am. B. R. 299; 196 Fed. 718.

Where assets have been forcibly taken out of estate while *in custodia legis*.

In re Landis, 18 Am. B. R. 483; 151 Fed. 896.

Sale of assets after filing of bankruptcy petition.

In re Denson, 28 Am. B. R. 158; 195 Fed. 854.

To recover money paid after the filing of the petition.

In re R. & W. Skirt Co. (C. C. A. 2nd Cir.), 34 Am. B. R. 353; 222 Fed. 256; 138 C. C. A. 67.

**Adverse claimant.**

Allegation that claim is "Merely colorable" must be supported by allegation of facts in support thereof to give referee jurisdiction to hear on merits.

In re Tarbox, 26 Am. B. R. 432; 185 Fed. 985.

In re Yorkville Coal Co. (C. C. A. 2nd Cir.), 33 Am. B. R. 633; 211 Fed. 619; 128 C. C. A. 570.

See, Collier (10th Ed.), p. 489.

**Scope. (Sec. 23-b construed).**

In re Ballou, 33 Am. B. R. 21; 215 Fed. 810.



Musica et al. v. Prentice (C. C. A. 5th Cir.), 31 Am. B. R. 687; 211 Fed. 326; 127 C. C. A. 575; aff'g In re Musica & Son, 30 Am. B. R. 555; 205 Fed. 413; appeal dismissed, 234 U. S. 263; 58 L. Ed. 1305.

Order referring proceeding to special master for determination not an adjudication of what constitutes an adverse claim.

In re Auerbach (C. C. A. 2nd Cir.), 29 Am. B. R. 791; 202 Fed. 192; 120 C. C. A. 406.

Officer of bankrupt corporation not an adverse claimant. In re Kornit Mfg Co. (D. C. N. J.), 27 Am. B. R. 244; 192 Fed. 392.

In re Cantelo Mfg Co. (D. C. Me.), 29 Am. B. R. 704; 201 Fed. 158.

Failure to allege possession of property in officer of bankrupt corporation.

In re Brockton Ideal Shoe Co. (C. C. A. 2nd Cir.), 29 Am. B. R. 846; 202 Fed. 199; 120 C. C. A. 447.

No jurisdiction by summary order when in hands of State court on replevin.

In re L. Rudnick & Co. (C. C. A. 2nd Cir.), 20 Am. B. R. 33; 160 Fed. 903; 88 C. C. A. 85.

See, Knapp and Spencer Co. v. Drew (C. C. A. 8th Cir.), 20 Am. B. R. 355; 160 Fed. 413; 87 C. C. A. 365.

Waiver by failure to object to jurisdiction.

Haffenberg v. Chicago Title & Trust Co. (In re Raphael), (C. C. A. 7th Cir.), 27 Am. B. R. 708; 192 Fed. 874; 113 C. C. A. 198.

Joinder of a defense on the merits with challenge to jurisdiction not permitted.

In re Kornit Mfg Co. (D. C. N. J.), 27 Am. B. R. 244; 192 Fed. 392.

Failure to object to jurisdiction until before appellate court.

In re Hopkins (C. C. A. 2nd Cir.), 36 Am. B. R. 158.

Order conclusive that at the time such order was made the bankrupt was in possession of the property directed to be turned over.

In re Frankel (D. C. N. Y.), 25 Am. B. R. 920; 184 Fed. 539.

Bankrupt estopped from denying such fact upon a motion to punish for contempt for refusing to obey.

s. c. (*supra*).

Only issue open is to show what he has done with the property since date of order.

s. c. (*supra*).

In re Marks, 22 Am. B. R. 568; 171 Fed. 281.

Cases holding *contra*,

In re Haring, 27 Am. B. R. 28; 203 Fed. 229; 121 C. C. A. 435; aff'g 193 Fed. 168

In re Goodrich (D. C. Mass.), 25 Am. B. R. 789; 192 Fed. 746.

In re Cole (C. C. A. 1st Cir.), 20 Am. B. R. 761; 163 Fed. 180; 90 C. C. A. 50.

FORM No. 120.

**SUMMARY ORDER THAT BANKRUPT TURN OVER CONCEALED ASSETS.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p>IN THE MATTER</p> <p>OF</p> <p>.....</p> <p><i>Bankrupt.</i></p>	<p>No. ....</p>
---	-----------------

..... the trustee herein having made an application to compel  
....., the bankrupt above named, to turn over to his said trustee, the  
sum of \$. ...., proceeds of certain property belonging to his estate, alleged  
to be in the possession and control of said bankrupt and which the said bank-  
rupt is fraudulently concealing from his said trustee, and the said .....  
having filed his verified answer thereto and the matter having been duly heard  
and testimony taken, and the referee having rendered a decision thereon,

Now, upon reading and filing the petition of ....., trustee herein,  
verified the ..... day of ....., 19..., the answer of ..... bank-  
rupt herein, verified the ..... day of ....., 19..., the testimony and  
all proceedings had herein and after hearing ....., attorney for the said  
trustee, in support of said petition, and ....., attorney for .....  
in opposition thereto, it is, upon motion of ....., attorney for said  
trustee,

Ordered, that the prayer of the trustee's petition herein, be, and it hereby is,  
granted, and

It is further ordered, that the said ....., bankrupt herein, account  
for and pay over within ..... days to ..... as trustee herein, the  
sum of \$. .... belonging to his said estate in bankruptcy and found to  
be in his possession or under his control.

Dated ....., 19...

.....,  
*Referee in Bankruptcy.*

## FORM No. 121.

**PETITION UNDER SEC. 60-d. TO RE-EXAMINE ATTORNEY'S FEE.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

To ..... Esq., Referee in Bankruptcy.

The petition of ..... respectfully shows to this court upon information and belief:

1. That he is the trustee herein, duly qualified and acting.

2. That on or about the .... day of ....., 19..., an involuntary petition in bankruptcy was filed against the above named bankrupt, and ..... Esq. was on the same day duly appointed temporary receiver herein and duly qualified, and that subsequently on said petition the said ..... was duly adjudged a bankrupt, and on the ..... day of ....., 19..., petitioner was duly appointed trustee herein.

3. That your petitioner through his attorney, has conducted a lengthy examination of the bankrupt and various witnesses at the adjourned first meeting of creditors. That among the persons examined was ....., Esq., an attorney at law of this court, residing in this district, and with an office at No. ...., City of ....., and the attorney for the bankrupt herein. That from said examination, it appears that the bankrupt herein in contemplation of bankruptcy has paid to the said ....., his attorney, the sum of \$..... for services to be rendered in connection with the said bankruptcy proceedings.

4. That your petitioner alleges that the said ..... has performed no services entitling him to retain the sum of \$..... nor any part thereof.

5. That no previous application has been made for an order herein.

Wherefore, your petitioner prays for an order under Sec. 60 (d) of the Bankruptcy Act, that the said payment be re-examined by this court and that the said ..... be directed to turn over to your petitioner as trustee, the

sum of \$. . . . . as a part of the assets belonging to this estate and for such other and further relief as may be just and proper.

. . . . ., *Petitioner.*

[Verification.]

**FORM No. 122.**

**ORDER FOR REPAYMENT BY ATTORNEY.**

United States District Court,  
for the . . . . . District of . . . . . :  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">. . . . .</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No. . . . .
---	---	-------------

. . . . ., as trustee in bankruptcy in the above entitled proceeding, having filed a petition herein, praying under Sec. 60 (d) that . . . . ., an attorney of this court, be directed to turn over to the said trustee the sum of \$. . . . ., proceeds of certain property alleged to belong to the said bankrupt estate and wrongfully retained for alleged services by the said . . . . ., and the matter having regularly come on for hearing and re-examination and the referee having on the . . . . . day of . . . . ., 19 . . . , handed down a decision and findings of fact,

Now, upon reading and filing the petition of . . . . ., trustee, verified the . . . . . day of . . . . ., 19 . . . , the answer of . . . . ., verified the . . . . . day of . . . . ., 19 . . . , the testimony, exhibits and all proceedings had herein, and after hearing . . . . ., attorney for the said trustee in support of the said petition, and . . . . ., attorney for . . . . ., in opposition thereto,

Now, upon motion of the said attorney for the trustee, it is

Ordered, that the prayer of the trustee's petition herein be and hereby is granted.

And it is further ordered, that the said . . . . . pay over within . . . . . days to . . . . . as trustee in bankruptcy herein, the sum of \$. . . . .

Dated . . . . ., 19 . . .

. . . . ., *Referee in Bankruptcy.*

## NOTES.

**Re-examination of payment to attorney. Sec. 60-d.**

**Jurisdiction.**—An administrative proceeding.

In re Wood and Henderson (U. S. Sup.), 20 Am. B. R. 1; 210 U. S. 246; 52 L. Ed. 1046. In re Lewin, 4 Am. B. R. 632; 103 Fed. 850.

Haffenberg v. Chicago Title & Trust Co. (C. C. A. 7th Cir.), 27 Am. B. R. 708; 192 Fed. 874; 113 C. C. A. 198.

Tripp v. Mitschrich (C. C. A. 8th Cir.), 31 Am. B. R. 662; 211 Fed. 424; 128 C. C. A. 96.

State court has no jurisdiction.

In re Wood and Henderson (*supra*).

Attorney not an adverse claimant.

In re Ellis Bros. Printing Co. (D. C. N. Y.), 19 Am. B. R. 472; 156 Fed. 430.

Summary order to restore property denied.

In re Gilroy & Bloomfield, 14 Am. B. R. 627; 140 Fed. 733.

Services are those to be rendered in contemplation of the filing of a petition "by or against" the bankrupt. Furth v. Stahl, 10 Am. B. R. 442; 205 Pa. St. 439; Pratt v. Bothe (C. C. A. 6th Cir.), 12 Am. B. R. 529; 130 Fed. 670; 65 C. C. A. 48.

In re Kross (D. C. N. Y.), 3 Am. B. R. 187; 96 Fed. 816. In re Habegger (C. C. A. 8th Cir.), 15 Am. B. R. 198; 139 Fed. 623; 71 C. C. A. 607.

In re Stolp, 29 Am. B. R. 32; 199 Fed. 488.

**Practice.**

By petition of trustee.

In re Shiebler & Co. (D. C. N. Y.), 20 Am. B. R. 777; 163 Fed. 545.

In re Wood and Henderson (*supra*).

When petition for restitution may be made by creditor.

In re Oakley, 31 Am. B. R. 806; 215 Fed. 265.

**Notice.**

In re Lewin (D. C. Vt.), 4 Am. B. R. 632; 103 Fed. 850.

When attorney ordered to turn over property.

In re Eurich's Fort Hamilton Brewery (D. C. N. Y.), 19 Am. B. R. 798; 158 Fed. 644.

When transfer of property by bankrupt in payment of attorney's fees and disbursements may be upheld.

In re Cummins (D. C. N. Y.), 28 Am. B. R. 385; 196 Fed. 224.



**FORM No 123.**

**EXCEPTIONS TO REFEREE'S ORDER.**

United States District Court,  
 ..... District of .....  
 In Bankruptcy.

IN THE MATTER  OF  .....  <i>Bankrupt.</i>	}	No. ....
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Now comes ..... of ..... (a creditor) of above named bankrupt and files the following exceptions to the decision and order made on the ..... day of ....., 19..., by ....., Esq., referee in charge of this proceeding:

*First.* That the said referee was without jurisdiction to make said order in the premises.

*Second.* That said order was contrary to the evidence as shown by the record herein and contrary to law.

*Third.* (Set forth specifically each exception relied upon.)

Dated ....., 19...

.....,  
 By ..... Attorney.  
 (Address)

**FORM No. 124.**

**PETITION TO REVIEW REFEREE'S ORDER.**

United States District Court,  
 ..... District of .....  
 In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No. ....
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To ....., Esq., Referee in Bankruptcy.

Your petitioner respectfully shows:

That he is a creditor of ....., the above named bankrupt, and that his claim has been allowed herein.

That in the course of the proceedings on the ..... day of ....., 19..., an order, a copy of which is hereto annexed, was made and entered herein.

That such order was and is erroneous in that.....  
 I. [set forth errors clearly and specifically].....

Wherefore, your petitioner, feeling aggrieved because of such order, prays that the same may be reviewed, as provided in the Bankruptcy Act of 1898 and General Order XXVII.

Dated ....., 19...

.....,  
*Petitioner.*

[Verification.]

**NOTES.**

**Sec. 38-a, 39-a (5), 2 (10).**

**General Order XXVII.**

Referee's findings of fact upon conflicting testimony should be upheld unless clearly wrong.

**In re Shriver, 10 Am. B. R. 746; 125 Fed. 511.**

**In re Carver & Co., 7 Am. B. R. 539; 113 Fed. 138.**

**In re Linton, 7 Am. B. R. 676.**

**Love v. Export Storage Co. (C. C. A. 6th Cir.), 16 Am. B. R. 172; 143 Fed. 1; 74 C. C. A. 155.**

**Houck v. Cristy (C. C. A. 8th Cir.), 18 Am. B. R. 330; 152 Fed. 612; 81 C. C. A. 602.**

**In re Kenyon, 19 Am. B. R. 194; 156 Fed. 863.**

Southern Pine Co. v. Savannah Trust Co. (C. C. A. 5th Cir.), 15 Am. B. R. 618; 141 Fed. 802; 73 C. C. A. 60.

Boyd v. Arnold, Loucheim & Co. (C. C. A. 5th Cir.), 17 Am. B. R. 839; 149 Fed. 187; 79 C. C. A. 135.

In re Simon & Sternberg, 18 Am. B. R. 204; 151 Fed. 507.

Findings based on undisputed facts set out in record entitled to no presumption in their favor.

In re Big Cahaba Coal Co. (D. C. Ala.), 26 Am. B. R. 910; 190 Fed. 900.

In the absence of statute or rule of court a petition to review an order of a referee does not of itself operate as a supersedeas.

In re Home Discount Co., 17 Am. B. R. 168; 147 Fed. 538.

Does not contemplate a trial *de novo*.

In re Home Discount Co. (*supra*).

Effect of special district rule.

In re T. M. Leshner & Son, 25 Am. B. R. 218; 176 Fed. 650.

Compare In re Greek Mfg. Co. (D. C. Pa.), 21 Am. B. R. 111; 164 Fed. 211.

#### Right of referee to review his own order.

No power after expiration of time limit for filing petition for review.

In re Marks, 22 Am. B. R. 568; 171 Fed. 281.

In re Greek Mfg. Co. (*supra*).

May be reviewed, though no formal exceptions are filed when such filing is not required by a local rule or order of the court.

In re People's Department Store Co. (D. C. N. Y.), 20 Am. B. R. 244; 159 Fed. 286.

In re Swift (D. C. Mass.), 9 Am. B. R. 237; 118 Fed. 348.

If no exceptions are taken the specific errors of law should be clearly set forth.

In re Covington, 6 Am. B. R. 373.

Upon review of an order or report of a referee, the judge may consider any point presented by the record whether raised or not before the referee.

In re Samuel Wilde's Sons (C. C. A. 2nd Cir.), 16 Am. B. R. 386; 144 Fed. 972; 75 C. C. A. 601; aff'd 13 Am. B. R. 217; 133 Fed. 562.

How the court will treat.

In re Doyle (D. C. N. Y.), 29 Am. B. R. 102; 199 Fed. 247.

In re Harris, 16 Am. B. R. 213; 143 Fed. 421.

Petition should "review order," not decision.

In re Chambers, Calder & Co., 6 Am. B. R. 709; 98 Fed. 865.

In re Octave Mining Co., 32 Am. B. R. 474; 212 Fed. 457.

Referee should certify a "summary of the evidence."

In re Marengo County Mercantile Co., 29 Am. B. R. 46; 199 Fed. 474.

In re Kurtz (D. C. Pa.), 11 Am. B. R. 129; 125 Fed. 992.

Compare Crim v. Woodford (C. C. A. 4th Cir.), 14 Am. B. R. 302; 136 Fed. 34; 68 C. C. A. 584.

Duty of referee to make findings.

In re Turetz, 29 Am. B. R. 752; 205 Fed. 400.

In re Baker (D. C. Mass.), 32 Am. B. R. 378; 212 Fed. 765.

#### Practice on: Construing general orders XXI, (6) and XXVII.

In re Arti-Stain Co., 32 Am. B. R. 640; aff'd s. c. 32 Am. B. R. 643; 216 Fed. 942. See, Collier (10th Ed.), p. 1077.

In re Smith (D. C. Tex.), 2 Am. B. R. 190; 93 Fed. 791.

In re Schimmel, 29 Am. B. R. 361; 203 Fed. 181.

District Court not bound by the referee's conclusions because the witnesses testified before him.

In re People's Department Store Co., 20 Am. B. R. 244; 159 Fed. 286.

Generally speaking, questions before the District Court on petition to review should be limited to those involved in the issues before the referee, and other matters deemed waived.

In re S. Z. Lorch & Co., 28 Am. B. R. 784; 199 Fed. 944.

In re Stokes, 26 Am. B. R. 255; 185 Fed. 994.

A defeated candidate for office of trustee has no standing to review order of appointment. Those whose claims are rejected are proper parties to take this action.

In re Grossman (D. C. N. Y.), 34 Am. B. R. 32; 225 Fed. 1020.

#### Time limit.

Where no local rule prescribes.

Crim v. Woodford (C. C. A. 4th Cir.), 14 Am. B. R. 302; 136 Fed. 34; 68 C. C. A.

584.

In re Chambers, Calder & Co. (*supra*).

Bacon v. Roberts (C. C. A. 3rd Cir.), 17 Am. B. R. 421; 146 Fed. 729; 77 C. C.

A. 155.

In re Foss, 17 Am. B. R. 439; 147 Fed. 790.

When petitioner may be excused in view of mistake.

In re Nippon Trading Co. (D. C. Wash.), 25 Am. B. R. 695; 182 Fed. 959.

Denied for laches.

In re Verdon Cigar Co. (D. C. Mich.), 27 Am. B. R. 56; 193 Fed. 813.

In Maryland, under local rule, 15 days.

In re Wink, 30 Am. B. R. 298; 206 Fed. 348.

In re Davison (D. C. N. Y.), 24 Am. B. R. 460; 179 Fed. 750.

In re Schimmel, 29 Am. B. R. 361; 203 Fed. 181.

In re Octave Mining Co. (*supra*).

In re Grant, 16 Am. B. R. 256; 143 Fed. 661.

In re Nicholls, 22 Am. B. R. 216; 166 Fed. 603.

Rule of reasonable time to review does not apply to a motion to vacate an order of referee on ground that he was without jurisdiction to make the order.

In re W. W. Russell Card Co., 23 Am. B. R. 300; 174 Fed. 202.

FORM No. 125.

REFEREE'S CERTIFICATE ON REVIEW.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER  OF  .....  <i>Bankrupt.</i>	}	No.....
--	---	---------

To the Hon. .... District Judge:

I, ....., the referee in bankruptcy in charge of this proceeding, do hereby certify:

That, in the course of such proceeding, an order, a copy of which is annexed to the petition hereinafter referred to, was made and entered on the ..... day of ....., 19...

That, on the ..... day of ....., 19..., ....., in such proceeding, feeling aggrieved thereat, filed a petition for a review, which was granted.

That the errors complained of by the petitioner being ..... in number are set forth in full in his petition.

That a summary of the evidence on which such order was based is as follows:

.....  
.....  
[That the question presented on this review is:.....]  
.....

I hand up herewith, for the information of the Judge, the following papers:

1. The record-book or minutes of this proceeding:
2. The petition on which this certificate is granted.
3. All other papers filed with me herein which are pertinent to this review.

Dated ..... 19...

Respectfully submitted,

.....,  
*Referee in Bankruptcy.*



FORM No. 126.

ORDER DISMISSING PETITION TO REVIEW REFEREE'S ORDER.

At a stated term of the United States District Court, for the ..... District of ..... held at the Court House in the City of ....., the ..... day of ....., 19...

PRESENT:

Hon. ....,  
*District Judge.*

IN THE MATTER
OF
.....
<i>Bankrupt.</i>

A motion having been made on behalf of ..... herein for an order dismissing the petition of ..... dated ..... filed herein on ..... to review the order of the referee (confirming a compromise with ..... a creditor herein), [or as fact may be], and it appearing to the satisfaction of the Court that (the said compromise was for the best interests of the estate, [that said order of the referee herein is regular and proper], and after hearing ..... of counsel for ..... in support of said motion and ..... for the said petitioners in opposition thereto, it is, on motion of ....., attorney for .....

Ordered, that the said motion of ..... be and the same hereby is granted and order of ....., Esq., referee herein, dated the ..... day of ....., 19... be confirmed, and it is further

Ordered, that said petition to review filed herein on ..... be and the same is hereby dismissed.

.....,  
*D. J.*

**FORM No. 127.**

**CERTIFICATE OF CONTEMPT FOR FAILURE TO OBEY SUMMARY ORDER.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER	}	No. ....
OF		
..... <i>Bankrupt.</i>		

To the United States District Court for the ..... District of .....:

I, ....., one of the referees in bankruptcy of this Court, do respectfully report and certify that on the ..... day of ....., I made an order requiring ....., bankrupt herein, to pay to ....., trustee in bankruptcy in this proceeding, on or before the .... day of ....., 19..., the sum of \$....., which said sum was in his possession or under his control and for which sum said ..... has not accounted.

At the time of the entry of said order said ..... was before me in person and by counsel ..... A copy of said order is filed herewith and made a part hereof.

I further certify that ..... has failed to comply with said order and that the time within which to comply has now expired.

I therefore find that said ..... is in contempt of court, and therefore recommend that he be punished for contempt and committed until he shall have paid to the said trustee, the said sum of \$.....

All of which is respectfully submitted.

Dated ....., 19...

.....,  
*Referee in Bankruptcy.*

FORM No. 128.

REFEREE'S CERTIFICATE ON DEFAULT OF WITNESS.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER  
OF  
.....  
*Bankrupt.*

To the Hon....., District Judge:

I, ....., referee in bankruptcy, to whom was referred the above entitled matter, do hereby certify that on the ..... day of ....., 19.., a subpoena was duly issued by ....., clerk of the United States District Court for the ..... District of ....., under the seal of said court, requiring ..... to attend before me at my office, No..... Street, City of ....., on the ..... day of ....., 19.., at ..... o'clock in the .....noon, to testify and give evidence herein on the part of the trustee of the estate of the above named bankrupt, (and produce at that time and place all his books, showing records of all purchases and sales made by him or under his supervision during the months of .... and ..... in the year 19..,) and that on the said ..... day of ....., 19.., at ..... o'clock in the .....noon, the said trustee attended at my office, No. .... Street, City of ....., with his counsel, prepared to examine the said ..... under the said subpoena, that the said trustee produced at the time and place aforesaid the said original subpoena, with proof of the due service thereof on the said ..... on ..... 19.., and that after waiting for thirty (30) minutes for the said ..... to appear, he failed to appear and his default was thereupon duly noted on the record in this case.

Pursuant to Section 41 of the Bankruptcy Act, I certify the foregoing facts and report that ..... is in contempt of this court for failure to appear in accordance with said subpoena on the ..... day of ..... 19..

Dated ....., 19...

Respectfully submitted,

.....,

*Referee in Bankruptcy.*

NOTES.

**General Order XII.**

Knapp & Spencer Co. v. Drew (C. C. A. 8th Cir.), 20 Am. B. R. 355; 160 Fed. 413; 87 C. C. A. 365.

Certificate of a referee cannot be considered a petition for review of the findings of the referee.

Craddock-Terry Co. et al. v. Kaufman, 23 Am. B. R. 724; 175 Fed. 303.

Referee may not certify a question of his own motion.

In re Reukauff, Sons & Co., Inc. (D. C. Pa.), 14 Am. B. R. 344; 135 Fed. 251.

In re Kimmel, 25 Am. B. R. 595; 183 Fed. 665.

Stamp tax under War Revenue Act of 1914.

In re Hawley (D. C. N. Y.), 220 Fed. 372.

**FORM No. 129.**

**REFEREE'S CERTIFICATE CLOSING PROCEEDING FOR LACK OF PROSECUTION.**

United States District Court,

for the ..... District of .....:

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

To the Hon.....,

District Judge:

I ....., the referee in bankruptcy in charge of this matter, do hereby certify and report that the order of adjudication and reference in this proceeding, was made on the ..... day of ....., 19... That no indemnity has been deposited herein nor any proceedings taken by the petitioning creditors to bring on the first meeting, though notified so to do. That after waiting ..... months and no further proceedings being taken, I made an order dated ....., 19..., requiring creditors and the bankrupt to show cause before me on ....., 19..., why this proceeding should not be dismissed, that said order having been duly served on the respective attorneys for the bankrupt, and the petitioning creditors and

by mail to all creditors and no one having appeared on the return day of said order to show cause, I hereby certify that this proceeding be dismissed for lack of prosecution and I hereby return herewith to the clerk of this court all the papers filed in my office in this proceeding.

Dated ..... , 19...  
.....,  
*Referee in Bankruptcy.*

NOTE.

See amendment 1910, Sec. 59-g, as to notice.

FORM No. 130.

REFEREE'S CERTIFICATE OF DISQUALIFICATION.

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER	{	No.....
OF		
..... <i>Bankrupt.</i>		

To the Honorable ..... , District Judge:

I, ....., one of the referees in bankruptcy of this court, do hereby certify that I am disqualified to act as such in the above entitled proceeding for the following reasons: .....  
.....  
.....

I do, therefore, return all the papers transmitted to me by the Clerk.

Dated ..... , 19...

.....,  
*Referee in Bankruptcy.*



FORM No. 131.

ORDER SUBSTITUTING NEW REFEREE.

United States District Court,  
..... District of .....

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p>.....</p> <p style="text-align: right;"><i>Bankrupt.</i></p>	}	No. ....
--	---	----------

On reading and filing the annexed certificate, and it appearing therefrom that ....., the Referee, heretofore appointed in the above proceeding, is disqualified by reason of his interest from acting therein,

It is ordered, that the said proceeding be referred to....., Esq., Referee in Bankruptcy, to act as Referee therein in the place and stead of the said ....., without prejudice to any action heretofore taken therein.

Dated ....., 19...

.....,

*D. J.*

NOTES.

**Disqualification of referee.**

Bray v. Cobb, 1 Am. B. R. 153; 91 Fed. 102.

In re Gardner, 4 Am. B. R. 420 and note; 103 Fed. 922.

Does not require consent of respondent.

Bray v. Cobb (*supra*).

Referee not disqualified when the only interest he has in the matter submitted to him is the compensation he may receive by way of fees.

In re Strobel (D. C. N. Y.), 19 Am. B. R. 109; 155 Fed. 692.

In re Abbey Press, 13 Am. B. R. 11; 134 Fed. 51.

The judge may, for the convenience of the parties or for cause, transfer a case from one referee to another within the district in which the proceeding is pending. No jurisdiction to refer a case to a referee appointed and residing in another district.

In re Schenectady Engineering & Construction Co., 17 Am. B. R. 279; 147 Fed. 868.

**Removal of referee.**

Birch v. Steele, 21 Am. B. R. 539; 165 Fed. 577.

In re Steele, 20 Am. B. R. 446; 161 Fed. 886.

Ex parte Steele, 20 Am. B. R. 575; 162 Fed. 694.

FORM No. 132.

PETITION FOR APPOINTMENT OF APPRAISERS.

United States District Court,  
..... District of .....:  
In Bankruptcy.

IN THE MATTER  
OF  
.....  
*Bankrupt.*

To ....., Esq.,  
*Referee in Bankruptcy.*

The petition of ..... respectfully shows:

1. That he is the trustee herein duly qualified and acting.
2. That as such trustee the following assets have come into his hands and remain unsold:.....
3. That petitioner desires to offer same at public sale pursuant to the rules of this Court.
4. That no appraisal of such property has been made.

Wherefore, petitioner prays that three disinterested persons be appointed by this Court to appraise such property and file their report therein with all convenient speed.

.....  
*Petitioner.*

[Verification.]

**FORM No. 133.**

[*Official.*]

**APPOINTMENT, OATH AND REPORT OF APPRAISERS.**

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER OF ..... <i>Bankrupt.</i></p>	}	No.....
--	---	---------

It is ordered that ....., of ....., of ....., and ....., of ....., three disinterested persons, be, and they are hereby, appointed appraisers to appraise the real and personal property belonging to the estate of the said bankrupt set out in the schedules now on file in this court and report their appraisal to the court, said appraisal to be made as soon as may be, and the appraisers to be duly sworn.

Witness my hand ..... this day of ....., A. D. 19..

.....

*Referee in Bankruptcy.*

.....District of....., ss.:

Personally appeared the within-named ....., ..... and ....., and severally made oath that they will fully and fairly appraise the aforesaid real and personal property according to their best skill and judgment.

.....  
.....  
.....

Subscribed and sworn to before me, this ..... day of .....  
A. D., 19...

.....

(*Official Character.*)

We, the undersigned, having been notified that we were appointed to estimate and appraise the real and personal property aforesaid, have attended to

the duties assigned us, and after a strict examination and careful inquiry, we do estimate and appraise the same as follows:

	Dollars.	Cents.

In witness whereof we hereunto set our hands, at ....., this ..... day of ....., A. D. 19...

.....,  
 .....  
 .....

### FORM No. 134.

#### PETITION OF APPRAISERS FOR ALLOWANCE FOR SERVICES.

United States District Court,  
 ..... District of .....:  
 In Bankruptcy.

IN THE MATTER	} No. ....
OF	
..... <i>Bankrupt.</i>	

To the District Court of the United States,  
 for the ..... District of .....:  
 The petition of ....., and .....,  
 respectfully shows:

That on the ..... day of ....., 19..., by order of ....., Esq., your petitioners were duly appointed appraisers herein. That said appraisers met at the office of ....., duly qualified and entered upon the performance of their duties.

That the property belonging to the bankrupt estate consisted of [Here set forth property] .....

That it was necessary for the appraisers to inventory and inspect all of said property.

That the total value of said property, as found by the appraisers and embodied in the appraisers' report on file in this proceeding, was the sum of \$.....

That the appraisers were engaged in making said appraisal and in preparation of their report for substantial portions of ..... days. That said appraisal, etc.: [Here set forth any particular facts as to difficulty, expert knowledge, etc.] .....

That your petitioners have received no compensation for their services as appraisers of this estate, and consider their said services to be reasonably worth the sum of \$..... each. That your petitioners are informed and verily believe that the trustee herein has in his hands sufficient funds to pay such allowance as may be made herein.

Wherefore, your petitioners pray that such allowances may be made to them for their services as to this court may seem just and reasonable.

.....,  
.....,  
.....,

*Petitioners.*

[Verification.]

# NOTES.

## Appraisers. Sec. 70-b.

In re Prager, 8 Am. B. R. 356.

In re Desrochers, 25 Am. B. R. 703, 721; 183 Fed. 991.

Appointment of on suggestion of creditor not necessarily void.

In re Columbia Iron Works, 14 Am. B. R. 526; 142 Fed. 234.

Appraisal—form of.

In re Gordon Supply, etc., Co., 13 Am. B. R. 352; 133 Fed. 798.

In absence of proof to contrary governs as to the value of bankrupt's property.

Schuler v. Hassinger (C. C. A. 5th Cir.), 24 Am. B. R. 184; 177 Fed. 119; 100 C. C.

A. 539.

In re Monsarrat (No. 2) (D. C. Haw.), 25 Am. B. R. 820.

When Court may disregard.

In re Zehner, 27 Am. B. R. 536; 193 Fed. 787.

Fees of appraisers.

In re Grimes, 2 Am. B. R. 730; 96 Fed. 529.

In re Jamieson, 6 Am. B. R. 601.

In re E. J. Fidler & Son (D. C. Pa.), 23 Am. B. R. 16; 172 Fed. 632.

In re Desrochers (*supra*).

Purchase of bankrupt's property by an official appraiser thereof not allowed.

In re Frazin & Oppenheim (C. C. A. 2nd Cir.), 24 Am. B. R. 598; 181 Fed. 307;

104 C. C. A. 529.



**FORM No. 135.****ORDER DECLARING FIRST DIVIDEND AND DIVIDEND SHEET.**

United States District Court,  
 for the ..... District of .....:  
 In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

The trustee herein having filed in the referee's office a report, dated .....  
 ....., 19..., showing that he has now in his hands money belonging to  
 the bankrupt estate sufficient to pay the dividend hereinafter declared, and it  
 appearing from said trustee's report that such dividend will not exceed fifty  
 per cent. of the money of the estate, excepting claims entitled to priority, it is,  
 on motion of ....., attorney for said trustee.

Ordered, that a first dividend of ..... per cent. (....%) be and the  
 same is hereby declared on the claims duly proved and allowed herein and not  
 entitled to priority of payment,

And it is further ordered that ....., trustee of the estate of the  
 above named bankrupt, be and is hereby directed to make the payments con-  
 tained in the dividend sheet hereto annexed out of the funds in his hands  
 belonging to the estate.

Dated ....., 19...

.....,  
*Referee in Bankruptcy.*

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER	} No.....
OF	
.....	
Bankrupt.	

**DIVIDEND SHEET.**

At the City of ....., in said District, on the ..... day of .....,  
A. D., 19...

A list of debts proved and claimed under said bankruptcy with a first  
dividend of ..... per cent., this day declared thereon by .....,  
Esq., referee in bankruptcy.

CREDITORS. CLAIM No.	CLAIM.	DIVIDEND.	DIVIDEND WITH FILING FEE.
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
Totals.....	.....	.....	.....

.....,  
*Referee in Bankruptcy.*

NOTES.

**Dividends. Secs. 65-a, b.**

**Cross-references, Secs. 39-a, (1), 47-a, (4), (9), 55-f, 57, 58-a, (5), (6), 66.**

**General Order XXIX.**

In computation for first dividend claims scheduled, but not filed, must be included.

In re Scott. 2 Am. B. R. 324; 96 Fed. 607.

See In re Walker. 3 Am. B. R. 35; 96 Fed. 550.

See, as to exceptions in some jurisdictions.

In re Heebner, 13 Am. B. R. 256; 132 Fed. 1003.

When order declaring dividend should be revoked and how far reviewable.

In re Henry Siegel Co. (D. C. Mass.), 32 Am. B. R. 645; 216 Fed. 943.

Declaration of final dividend before expiration of one year.

When same will not be set aside.

In re Coulter, 30 Am. B. R. 75; 206 Fed. 906.

Dividends undistributed in hands of a trustee are not subject to attachment or  
garnishment.

In re Hollander (D. C. Md.), 25 Am. B. R. 48; 181 Fed. 1019.

In re Argonaut Shoe Co. (C. C. A. 9th Cir.), 26 Am. B. R. 584; 187 Fed. 784; 109 C. C. A. 632.

Cowart v. W. E. Caldwell Co. (Ga. Sup. Ct.), 24 Am. B. R. 546.

In re Thompson-Breese Co., 30 Am. B. R. 105.

In re American Electric Telephone Co. (C. C. A. 7th Cir.), 31 Am. B. R. 612; 211 Fed. 88; 127 C. C. A. 512.

Duty of referee to furnish trustee with dividend sheet.

Checks should only be made payable to those whose names appear on such sheet or the trustee incurs the risk of his vouchers not being approved.

In re Carr, 8 Am. B. R. 635; 116 Fed. 556.

Referee may order at request of creditor payment by trustee of dividend withheld without sufficient reason.

Time of payment of dividends.

In re Bell Piano Co. (D. C. N. Y.), 18 Am. B. R. 183; 155 Fed. 272.

In re Eldred, 19 Am. B. R. 52; 155 Fed. 686.

In re Stein, 1 Am. B. R. 662; 94 Fed. 124.

Distribution.

In re Kohler (C. C. A. 6th Cir.), 20 Am. B. R. 89; 159 Fed. 871; 87 C. C. A. 51.

Distribution of proceeds of securities deposited by private banker with New York State Comptroller.

In re Rosett (C. C. A. 2nd Cir.), 30 Am. B. R. 309; 204 Fed. 431; 122 C. C. A. 617; aff'g s. c. 29 Am. B. R. 341; 203 Fed. 67.

### FORM No. 136.

#### NOTICE OF DIVIDEND AND WARRANT.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER

OF

Notice of Dividend.

No. ....

.....  
*Bankrupt.*

Notice of the declaration and time of the payment of ..... dividend.

At ....., on the ..... day of ....., 19...

To the Creditors of the above named Bankrupt:

Notice is hereby given, that I have this day declared a ..... dividend out of the above estate of ..... per cent., upon the claims proved and allowed herein.

.....,  
*Referee in Bankruptcy.*

To the Creditors of the above named Bankrupt whose claims have been proved and allowed herein :

I hereby inform you that you may, on application at my office, No. ...., Street, in the City of ....., on the ..... day of ....., 19..., or on any day thereafter, between the hours of ....., M. and ....., M., receive a warrant for a ..... dividend due to you out of the above estate. If you cannot personally attend, the warrant will be delivered to your order on your filling up and signing the subjoined letter.

.....,

*Trustee in Bankruptcy.*

To ..... Street, City of .....

Trustee in Bankruptcy of the estate of ....., Bankrupt.

Please deliver to ....., the warrant for the ..... dividend payable out of the said estate to me.

(Signed)

.....,

*Creditor.*

**FORM No. 137.**

**ORDER THAT TRUSTEE PAY DIVIDEND HERETOFORE DECLARED.**

United States District Court,

..... District of .....

In Bankruptcy.

IN THE MATTER

OF

*Bankrupt.*

Upon reading and filing the affidavit of ....., a creditor herein whose claim was duly filed and allowed herein on the ..... day of ....., 19..., duly verified, and upon all the proceedings heretofore had herein and it appearing that a dividend of \$...... was heretofore declared upon the claim of the said ....., on the ..... day of ....., 191..., and that ..... Esq., unreasonably refuses to pay such dividend to said creditor, now, upon motion of ....., attorney for said creditor it is, ordered that .....

..... the trustee in bankruptcy herein pay forthwith to said creditor the sum of \$..... the amount of the dividend heretofore declared upon his said claim.

Dated, ....., 19...

.....  
*Referee in Bankruptcy.*

### FORM No. 138.

#### NOTICE OF FINAL MEETING.

United States District Court,  
 ..... District of .....:  
 In Bankruptcy.

IN THE MATTER  OF  ..... <i>Bankrupt.</i>	} No. ....
--	------------

To the Creditors of the above named Bankrupt:

Notice is hereby given that the trustee in bankruptcy in this proceeding has filed his final account in the office of the undersigned referee herein, where it may be inspected by creditors, and that a final meeting of the creditors of said bankrupt will be held at the Referee's Office, No. .... Street, in the City of ....., County of ....., on ....., 19..., at ..... M., at which meeting the said trustee's account will be examined, and if found correct, the same will be allowed and the trustee discharged of his trust, and the amount, if any, remaining for dividends, will be determined by the referee and a final dividend declared, if there are funds applicable thereto; and any other business proper to be performed at said meeting may be transacted.

Dated ....., 19...

.....  
*Referee in Bankruptcy.*



FORM No. 139.

**ORDER PASSING TRUSTEE'S ACCOUNT AND DECLARING DIVIDEND.**

In the District Court of the United States,  
for the ..... :  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	<p>No. ....</p>
---	-----------------

The Trustee in Bankruptcy in this proceeding having duly filed his verified final account, and due notice of filing said account and of a final meeting of the creditors, to be held at the Referee's office, to pass upon said account and to fix the amounts to be allowed for debts and payments entitled to priority and to declare a dividend, having been given to the creditors, and the said meeting of creditors having been duly held, and any objections in reference to said account or to the allowance of said debts or payments entitled to priority or otherwise having been duly heard and considered, it is hereby

Ordered, that the said account be passed and allowed as filed.

And it is further ordered, that the debts and payments entitled to priority are hereby fixed and allowed by the Referee at the amounts stated in a certain list of debts and payments entitled to priority filed herewith, and the Trustee is hereby directed to pay to the persons named in said list, out of the balance in his hands, the amounts stated therein to be due to said persons respectively ;

And the balance in the hands of the Trustee, as shown by his final account as settled and allowed, being \$. .... and the aggregate amount of said debts and payments entitled to priority being ..... leaving, after the payment of said debts and payments entitled to priority, \$. .... applicable to the payment of dividends : and the aggregate amount of the claims proved and allowed in this proceeding and not entitled to priority to this date, being \$. .... and the said amount remaining in the Trustee's hands, applicable to the payment of dividends, being ..... per cent. of said aggregate amounts of said claims proved and allowed, it is further

Ordered, that a dividend of ..... per cent. be and hereby is declared upon the said claims of creditors, and that the said Trustee be and hereby is directed to pay to the said creditors the respective amounts stated in a dividend list made out and filed with this order : and it is further

Ordered, that the said Trustee take a receipt for the payments directed by this order, and return the same to the office of the Referee with all convenient speed.

Dated ..... , 19...  
.....,  
*Referee in Bankruptcy.*

**FORM No. 140.**

**ORDER FIXING ALLOWANCE OF BANKRUPT'S ATTORNEY.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER  OF  .....  <i>Bankrupt.</i>	}	No. ....
--	---	----------

....., the attorney for the bankrupt herein, having presented his duly verified petition, praying that he be allowed a reasonable amount for services rendered by him to the bankrupt in this proceeding, and that he be repaid certain moneys expended by him, and the trustee herein having received due notice of the application and hearing thereon, now on reading and filing the petition of ....., verified ....., 19..., and after hearing ....., in support of said petition, and no one appearing in opposition thereto, it is, on motion of ....., attorney for the bankrupt herein,

Ordered, that the sum of ..... dollars be and the same is hereby allowed to the said ..... for his services as attorney for the bankrupt herein and the further sum of ..... dollars for his disbursements incurred for said estate and the trustee is directed to pay said sums out of the funds in his hands belonging to the estate.

Dated ..... , 19...  
.....,  
*Referee.*

NOTES.

In Southern District of New York, See Rule XXII. In Western District, Rule XXXI.

**Compensation of bankrupt's attorney.—For what services compensated.**

In re Goldville Mfg. Co., 10 Am. B. R. 552; 123 Fed. 579.

In re Rosenthal, 9 Am. B. R. 626; 120 Fed. 848.

In re Mayer, 4 Am. B. R. 238; 101 Fed. 695.

In re Terrill, 4 Am. B. R. 625; 103 Fed. 781.

In re Anderson, 4 Am. B. R. 640; 103 Fed. 854.

In re Carolina Cooperage Co., 3 Am. B. R. 154; 96 Fed. 950.

In re Payne (D. C. N. Y.), 18 Am. B. R. 192; 151 Fed. 1018.

In re Hitchcock, 17 Am. B. R. 664. In re Kross, 3 Am. B. R. 187; 96 Fed. 816.

Only one allowance, though members of a bankrupt firm appear by different attorneys.

In re Eschwege & Cohn, 8 Am. B. R. 282.

In re Christianson (D. C. N. Dak.), 23 Am. B. R. 710; 175 Fed. 867.

In re K. L. Wong (D. C. Haw.), 30 Am. B. R. 125.

In re Lane Lumber Co. (Whitla & Nelson v. Boyd), 30 Am. B. R. 749; 206 Fed. 780; aff'd, 32 Am. B. R. 469; 213 Fed. 587; 130 C. C. A. 167.

No fee for contesting involuntary petition when adjudication follows.

In re Francis Levy Outfitting Co. Ltd., 29 Am. B. R. 8.

See In re Perlhefter and Shatz, 25 Am. B. R. 586.

No allowance for services in resisting proceeding by trustee to compel bankrupt to turn over assets.

In re Felson, 15 Am. B. R. 185; 139 Fed. 275.

In re Stratemeyer, 14 Am. B. R. 120.

What considered in determining compensation.

In re Duran Mercantile Co., 29 Am. B. R. 450; 199 Fed. 961.

Excludes services in connection with discharge.

In re Brundin, 7 Am. B. R. 296; 112 Fed. 306.

In re Averill, 1 N. B. N. 544.

See In re Gillardon, 26 Am. B. R. 103; 187 Fed. 289.

Excludes services to bankrupt on exemptions.

In re Castleberry, 16 Am. B. R. 430; 143 Fed. 1021.

In re Borhman, 34 Am. B. R. 801; 224 Fed. 287.

If attorney has previously received compensation from the bankrupt for the services, no further sum should be allowed.

In re O'Connell, 3 Am. B. R. 422; 98 Fed. 83.

In re Smith, 5 Am. B. R. 559; 108 Fed. 39.

Compare In re Goodwin, 2 N. B. N. Rep. 445.

In re Young (D. C. N. Car.), 16 Am. B. R. 106; 142 Fed. 891.

Not entitled to compensation for services rendered upon questions of allowance of claims.

Ohio Valley Bank Co. v. Mack et al. (C. C. A. 6th Cir.), 20 Am. B. R. 40; 163 Fed. 155; 89 C. C. A. 605; aff'd 20 Am. B. R. 919.

Allowance in discretion of the court and payments to an attorney valid only so far as subsequently approved by the court.

In re Morris, 11 Am. B. R. 145; 125 Fed. 841.

On confirmation of composition bankrupt must pay his attorney for his services in the matter.

In re Martin (D. C. N. Y.), 18 Am. B. R. 250; 151 Fed. 780.

When confirmation is contested.

In re Fogarty (C. C. A. 8th Cir.), 26 Am. B. R. 568; 187 Fed. 773; 109 C. C. A. 621.

In re Keller (D. C. N. Y.), 31 Am. B. R. 51; 207 Fed. 118.

In re Hammels and Hofman (D. C. N. Y.), 31 Am. B. R. 672; 211 Fed. 238.

Allowance to bankrupt's attorney for disbursements and filing fee paid by him in voluntary proceedings while involuntary petition is pending.

In re Carpenter (D. C. N. Y.), 25 Am. B. R. 161.

Compare In re Stegar (D. C. Ala.), 7 Am. B. R. 665; 113 Fed. 978.

When transfer of property by bankrupt to attorney for payment of fees and disbursements for services rendered and to be rendered may be upheld by the court reviewing same.

In re Cummins (D. C. N. Y.), 28 Am. B. R. 385; 196 Fed. 224.

[See notes on review of fee paid by bankrupt to attorney under Sec. 60-d, Form No. 122. See costs to bankrupt on dismissal of petition.]

### FORM No. 141.

#### REFEREE'S CERTIFICATE OF INDEMNITY.

United States District Court,

for the ..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

I, ....., Referee in Bankruptcy, to whom the above entitled proceeding has been duly referred, do hereby certify that an order has been made and entered herein discharging the Trustee and canceling his bond; that the following is an itemized statement of the sum deposited with me as indemnity herein and of the items of charges against the same and that there is no balance remaining of said sums in my hands, and that the proceeding is closed.

Dated ....., 19...

.....  
*Referee in Bankruptcy.*

[Attach Statement.]

#### NOTES.

**Referee's Compensation.**

**Secs. 40, 72.**

Consult local rules.

In re Elk Valley Coal Mining Co., 32 Am. B. R. 197; 213 Fed. 383.

In re Langford et al. (D. C. Cal.), 35 Am. B. R. 519; 225 Fed. 311.

In cases of quasi-composition.

Fielding v. Philips (In re Philips and McEachin) (C. C. A. 5th Cir.), 31 Am. B. R. 542; 210 Fed. 889; 127 C. C. A. 499.

On common-law settlements it has recently been held in Southern District of New York (In re Arnold B. Heine and Co., No. 21163; not reported) that referees were not entitled to commissions.

Not entitled to commissions on moneys disbursed by trustee in conducting business of bankrupt.

In re M. F. Rourke Co. (D. C. Tenn.), 31 Am. B. R. 788; 209 Fed. 877.

Bray v. Johnson (C. C. A. 4th Cir.), 21 Am. B. R. 383; 166 Fed. 57; 91 C. C. A. 643.

In re C. J. McCubbin Co. (Dist. of Col. Sup. Ct.), 33 Am. B. R. 277.

Commissions out of mortgaged property.

Varney, Referee v. Harlow, Trustee, 31 Am. B. R. 339; 210 Fed. 824; 127 C. C. A. 374.

Pledged property.

In re Meadows et al. (C. C. A. 2d Cir.), 33 Am. B. R. 649; 211 Fed. 948; 128 C. C. A. 446; aff'g s. c. 29 Am. B. R. 165; 199 Fed. 304.

## FORM No. 142.

[Official.]

### PETITION AND ORDER FOR REDEMPTION OF PROPERTY FROM LIEN.

United States District Court,

..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

Respectfully represents ....., trustee of the estate of said bankrupt, that a certain portion of said bankrupt's estate, to wit: (Here describe the estate or property and its estimated value) is subject to a mortgage (describe the mortgage), or to a conditional contract (describing it), or to a lien (describe the origin and nature of the lien), (or if the property be personal property, has been pledged or deposited and is subject to a lien) for (describe the nature of the lien), and that it would be for the benefit of the estate that said property should be redeemed and discharged from the lien



thereon. Wherefore, he prays that he be empowered to pay out of the assets of said estate in his hands the sum of ....., being the amount of said lien, in order to redeem said property therefrom.

Dated this ..... day of ....., A. D. 19...

.....,

*Trustee.*

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now after due hearing, no adverse interest being represented thereat (or after hearing ..... in opposition thereto), it is ordered that the said trustee be authorized to pay out of the assets of the bankrupt's estate specified in the foregoing petition the sum of ....., being the amount of the lien, in order to redeem the property therefrom.

Witness my hand this ..... day of ....., A. D. 19...

.....,

*Referee in Bankruptcy.*

**FORM No. 143.**

**PETITION FOR ORDER OF PROTECTION.**

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER
OF
.....
<i>Bankrupt.</i>

No.....

To ....., Esq., Referee in Bankruptcy:

Your petitioner respectfully shows:

That he was adjudicated bankrupt herein on the ..... day of ....., 19..., and on the same day this proceeding in bankruptcy was duly referred.

That your petitioner has not yet made application for his discharge herein.

That your petitioner has reason to believe that he is liable to arrest upon civil process, other than in the cases specified in Section 9-a of the Bankruptcy Act of 1898.

That no previous application has been made to this or any other court for the order hereinafter asked.

Wherefore, your petitioner prays for an order of protection from arrest, as provided in said Section 9-a and General Order XII (1).

Dated ....., 19....

*Petitioner.*

[Verification.]

NOTES.

Rarely used.

See, generally, Section 9-a. Consult also General Order XII (1). The application generally takes the form of a petition for an injunction against further proceedings in a suit, on the theory that a body execution is a step in a suit.

In re Marcus (C. C. A. 1st Cir.), 5 Am. B. R. 365; 105 Fed. 907; 45 C. C. A. 115.

**FORM No. 144.**

**ORDER OF PROTECTION.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER	} No. ....
OF	
.....	
<i>Bankrupt.</i>	

The above named bankrupt having, on the ..... day of ....., 19.., applied for an order of protection, and it appearing that one year has not yet elapsed since the date of his adjudication, viz., the ..... day of ....., 19..., and that he has not yet been discharged herein, now on motion of ....., Esq., attorney for said bankrupt, it is

Ordered, that all persons and officers be and they hereby are prohibited from arresting the said bankrupt on civil process, save in the cases specified in subdivisions (1) and (2) of Section 9-a of the Bankruptcy Law of 1898, and amendments thereto, until twelve months after the date of such adjudication, or, if within that time the bankrupt applies for a discharge, then until the question of such discharge is determined.

*Referee in Bankruptcy.*

Dated ....., 19....

## PART IV.

### PROOFS OF DEBT AND PROCEEDINGS FOR ALLOW- ANCE OF CLAIMS.

- FORM No. 145. Proof of unsecured Debt.  
146. Proof of secured Debt.  
147. Proof of Debt due Corporation.  
148. Proof of Debt by Partnership.  
149. Proof of Debt by Agent or Attorney.  
150. Proof of secured Debt by Agent or Attorney.  
151. Proof of Debt by Municipality for Taxes and Notice.  
152. Proof of Priority Claim for Wages.  
153. Proof of Debt by Trustee in Bankruptcy.  
154. Affidavit of lost Bill or Note.  
155. General Letter of Attorney in Fact.  
156. Acknowledgment to Letter of Attorney by Member of Partnership.  
157. Acknowledgment to Letter of Attorney by Corporation.  
158. Special Letter of Attorney.  
159. Objections to Proof of Debt.  
160. Petition that Proof of Debt be re-examined.  
161. Order for Re-examination of Claim.  
162. Notice to Claimant thereon.  
163. Notice by Order to show Cause. (Substitute for Form No. 162.)  
164. Order expunging or reducing Proof of Debt.  
165. Order allowing Proof of Debt.  
166. Order for Liquidation of Claim.  
167. Petition for Payment of priority Claims and Schedule thereof.  
168. Order for Payment of priority Claims.  
169. Petition to review Order expunging Proof of Debt.  
170. Petition that all Claims to Securities etc. be filed and referred.  
171. Order to show Cause thereon.  
172. "Omnibus" Order directing that Claims to Securities etc. be filed and referred.

**FORM No. 145.**

[Official.]

**PROOF OF UNSECURED DEBT.**

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No. ....
---	---	----------

At ..... in said ..... district of ....., on the  
..... day of ....., A. D., 19..., came .....  
of ....., in the County of ....., in said  
District of ....., and made oath, and says that .....  
.....  
the person by (or against) whom a petition for adjudication of bankruptcy  
has been filed, was at and before the filing of said petition, and still is, justly  
and truly indebted to said deponent in the sum of ..... dollars;  
that the consideration of said debt is as follows:  
.....  
that no part of said debt has been paid (except .....  
.....);  
that there are no set-offs or counterclaims to the same (except .....  
.....) and that deponent has not, nor  
has any person by his order, or to his knowledge or belief, for his use, had or  
received any manner of security for said debt whatever. \*that said debt is on  
existing in open account and ..... due on the ..... day of  
....., 19..., and no note has been received for such account, nor  
any judgment rendered thereon.

.....  
Creditor.

Subscribed and sworn to before me this ..... day of  
..... A. D. 19.

\* See General Orders, XXI, i.

.....  
(Official character.)

## NOTES.

**Proof and allowance of claims.** Act Sec. 57-a, b, c, d, m, n.

**General Orders XX, XXI, 1.**

**Practice.**

In re Sumner, 4 Am. B. R. 123; 101 Fed. 224.

In re Dunn Hardware and Furniture Co., 13 Am. B. R. 147; 132 Fed. 719.

Proofs of debt must show at least (1) the claim, (2) the consideration therefor, (3) security held therefor, (4) payments thereon, (5) that sum claimed is justly due and owing.

It is the duty of the referee to examine the proofs filed to ascertain whether they comply with the statute and general orders.

In re Goble Boat Co. (D. C. N. Y.), 27 Am. B. R. 48; 190 Fed. 92.

Undisclosed credits, erasure of word "except" after "no part of said debt has been paid."

In re Girvin (D. C. N. Y.), 20 Am. B. R. 490; 160 Fed. 197.

What may be considered as a claim.

In re Faulkner (C. C. A. 8th Cir.), 20 Am. B. R. 542; 161 Fed. 900; 88 C. C. A. 505. Court may not allow inequitable claims.

In re Dove Harris Woodworth Co. (Ref. N. Y.), N. Y. Law Journal, April 10, 1916. When not "duly proved."

In re Goble Boat Co. (*supra*).

Proof by representative of a class.

In re Salvator Brewing Co. (C. C. A. 2nd Cir.), 28 Am. B. R. 56; 193 Fed. 989; 113 C. C. A. 626; aff'g s. c. 26 Am. B. R. 21; 188 Fed. 522.

All the formalities required in ordinary pleadings do not apply to the filing of a proof of debt in bankruptcy.

Kelsey v. Munson (C. C. A. 8th Cir.), 28 Am. B. R. 520; 198 Fed. 841; 117 C. C. A. 483.

**Statement of Consideration.**

In re Stevens, 5 Am. B. R. 806; 107 Fed. 243. In re Creasinger, 17 Am. B. R. 538; 145 Fed. 224. "For legal services," insufficient.

In re Scott, 1 Am. B. R. 553; 93 Fed. 418.

Allegations founded upon "information and belief," not sufficient.

In re United Wireless Telegraph Co. (D. C. Me.), 29 Am. B. R. 848; 201 Fed. 445. A statement that claim is for "goods, wares and merchandise" is insufficient.

In re Blue Ridge Packing Co., 11 Am. B. R. 36; 125 Fed. 619.

In re Morris, 18 Am. B. R. 828; 154 Fed. 211.

In re Brett, 12 Am. B. R. 492; 130 Fed. 981.

In re Coventry Evans Furniture Co., 22 Am. B. R. 272; 166 Fed. 516.

Withdrawal of note from proof of debt. Sec. 57-b.

In re Loden, 25 Am. B. R. 917; 184 Fed. 965.

Failure to file written instrument with proof of claim under Sec. 57-b raises no presumption against its existence.

Whitney v. Dresser (C. C. A. 2d Cir.), 13 Am. B. R. 747; 135 Fed. 495; aff'd, 200 U. S. 532, 535; 50 L. Ed. 584.

Absence of date in deposition.

In re Blue Ridge Packing Co. (*supra*).

Not a pleading, but a deposition. Should state the origin and character of the debt and the items thereof.

In re Creasinger (*supra*).

In re United Wireless Telegraph Co. (*supra*).

Proof of debt *prima facie* evidence of the indebtedness.



Whitney v. Dresser (*supra*).

A proved claim does not become allowed by the filing thereof.

In re Two Rivers Woodenware Co. (C. C. A. 7th Cir.), 29 Am. B. R. 518; 199 Fed. 877; 118 C. C. A. 325.

**Oath and acknowledgment thereof.**

Proof made under power of attorney, acknowledged before a foreign consul is sufficient.

In re Sugenhimer (D. C. N. Y.), 1 Am. B. R. 425; 91 Fed. 744.

When taken before notary of another State no further proof of authority required than signature and seal.

In re Pancoast, 12 Am. B. R. 275; 129 Fed. 643.

Claim sworn to before claimant's attorney of record as notary proper.

In re Kimball, 4 Am. B. R. 144; 100 Fed. 777.

Amendment of verification.

In re Medina Quarry Co. (D. C. N. Y.), 24 Am. B. R. 769; 179 Fed. 929.

**Assigned claims.** See General Order XXI.

How proven.

In re Finlay Bros., 3 Am. B. R. 738; 104 Fed. 675.

Assignment of claim after bankruptcy and before proof should be supported by affidavit of assignor, owner at time of filing of petition setting forth the consideration.

In re McCarthy Portable Elevator Co. (D. C. N. J.), 30 Am. B. R. 247; 205 Fed. 986.

Such facts should be shown as will estop the assignor from making the same claim.

In re Miner, 8 Am. B. R. 248; 114 Fed. 998; 9 Am. B. R. 100; 117 Fed. 953.

**Filing of Proof.**

In re French (D. C. Mass.), 25 Am. B. R. 77; 181 Fed. 583.

A creditor by filing a claim in bankruptcy acquiesces in the adjudication.

In re New York Tunnel Co. (C. C. A. 2d Cir.), 21 Am. B. R. 531; 166 Fed. 234; 92 C. C. A. 202.

Where a trustee to whom a proof of claim has been delivered does not deliver such proof of claim to the referee, creditor cannot be charged with failure to file proof and it is a sufficient filing of the proof.

J. B. Orcutt Co. v. Green (U. S. Sup.), 17 Am. B. R. 72; 204 U. S. 96; 51 L. Ed. 390; rev'g In re Ingalls Bros. (C. C. A. 2d Cir.), 13 Am. B. R. 512; 137 Fed. 517; 70 C. C. A. 101.

In re Kessler et al. (C. C. A. 2d Cir.), 25 Am. B. R. 512; 184 Fed. 51; 107 C. C. A. 13; rev'g 23 Am. B. R. 901; 176 Fed. 647.

In re Fairlamb Co., 28 Am. B. R. 515; 199 Fed. 278.

Not extended to employee of trustee.

In re Lathrop, Haskins and Co. (C. C. A. 2d Cir.), 28 Am. B. R. 756; 197 Fed. 164; 116 C. C. A. 601.

Creditor entitled to interest.

In re John Osborn's Sons and Co. (C. C. A. 2d Cir.), 24 Am. B. R. 65; 177 Fed. 184; 100 C. C. A. 392.

Computation of interest to date of filing of petition not intended to apply to a solvent estate, when interest may be allowed subsequent to filing of petition.

Johnson v. Norris (C. C. A. 5th Cir.), 27 Am. B. R. 107; 190 Fed. 459; 111 C. C. A. 291.

An adjudication in involuntary bankruptcy is not *res adjudicata* as to the validity or amount of a petitioning creditor's claim.

In re Continental Corporation, 14 Am. B. R. 538.

See *Ayres v. Cone et al.* (C. C. A. 8th Cir.), 14 Am. B. R. 739; 138 Fed. 778; 71 C. C. A. 144.

Nor does it dispense with the necessity of making and filing formal proof of debt.  
In re Harper, 23 Am. B. R. 918; 175 Fed. 412.

Judgment creditor must file in order to share in estate.

In re Rosenberg, 16 Am. B. R. 465; 144 Fed. 442.

In re McBryde, 3 Am. B. R. 729; 99 Fed. 686.

Indorser on notes of bankrupt may not file claim under Sec. 57-i until creditor has failed to do so.

In re Manhattan Brush Mfg. Co. (D. C. N. Y.), 31 Am. B. R. 747; 209 Fed. 997.

Waiver by filing claim.

Lynch v. Bronson, 20 Am. B. R. 409; 160 Fed. 139; In re Kenyon, 19 Am. B. R. 194; 156 Fed. 863.

In re Lewensohn (D. C. N. Y.), 3 Am. B. R. 594; 99 Fed. 73.

Mere taking a promissory note without any payment thereon does not discharge an original debt having any privileges under the Bankruptcy Act.

In re Worcester Co., 4 Am. B. R. 496; 102 Fed. 808; 42 C. C. A. 637.

Dowse v. Hammond, 130 Fed. 103; 64 C. C. A. 437.

When right to bring action not waived by filing proof of claim.

Frey v. Torrey (N. Y. Ct. of App.), 175 N. Y. 501; aff'g 8 Am. B. R. 196; 70 App. Div. (N. Y.) 166; aff'g 6 Am. B. R. 448.

In re Jacob Berry and Co. (C. C. A. 2d Cir.), 23 Am. B. R. 27; 174 Fed. 409; 98 C. C. A. 360; aff'g 146 Fed. 623.

In re Buchans Soap Corp. (D. C. N. Y.), 22 Am. B. R. 382; 169 Fed. 1017.

Goods obtained by "false representations."

Maxwell v. Martin, 22 Am. B. R. 93; 130 App. Div. (N. Y.) 80; 114 N. Y. Supp. 349.

Standard Sewing Machine Co. v. Alexander, 68 So. Car. 506; 47 S. E. 711.

Election of remedies.

In re Stewart (D. C. N. Y.), 24 Am. B. R. 474; 178 Fed. 463.

#### **Time limit for proving claims. Sec. 57-n.**

No statutory right to file after one year. Applies only to claims sought to be asserted in the bankruptcy proceedings.

Norfolk and West. R. Co. v. Graham (C. C. A. 4th Cir.), 16 Am. B. R. 610; 145 Fed. 809; 76 C. C. A. 385.

In re Meyer (D. C. Ore.), 25 Am. B. R. 44; 181 Fed. 904.

Not binding on the United States.

In re Stoeve, 11 Am. B. R. 345; 127 Fed. 394.

Judgment. In re Rosenberg (*supra*).

In re Leibowitz, 6 Am. B. R. 268; 108 Fed. 617.

Attaching creditor. In re Baird and Co., 18 Am. B. R. 228; 154 Fed. 215.

When year expires.

In re Co-operative Knitting Mills, 30 Am. B. R. 181; 202 Fed. 1016.

Failure to file through accident or mistake no excuse.

In re Sanderson, 20 Am. B. R. 396; 160 Fed. 278.

In re Peck, 20 Am. B. R. 629; 161 Fed. 762.

In re Pettingill and Co. (D. C. Mass.), 14 Am. B. R. 763.

See In re Fagan, 15 Am. B. R. 520; 140 Fed. 758.

In re Blond (D. C. Mass.), 34 Am. B. R. 193; 188 Fed. 452.

*Nunc pro tunc* order cannot be entered.

In re Co-operative Knitting Mills (*supra*).

A creditor who has not received any notice of the proceeding and has no actual knowledge thereof may not prove his claim after year has expired.

In re Muskoka Lumber Co. (D. C. N. Y.), 11 Am. B. R. 761; 127 Fed. 886.

**Amendments of proof.**

In re Stevens, 5 Am. B. R. 806; 107 Fed. 243.

Changing character of claim by amendment not usually allowed.

In re Miner's Brewing Co., 20 Am. B. R. 717; 162 Fed. 327.

In re McCallum and McCallum (D. C. Pa.), 11 Am. B. R. 447; 127 Fed. 768.

When allowed.

In re Roeber (C. C. A. 2d Cir.), 11 Am. B. R. 464; 127 Fed. 122; 62 C. C. A. 122.

In re Robinson, 14 Am. B. R. 626; 136 Fed. 994.

In re Myers and Charni, 3 Am. B. R. 760; 99 Fed. 601.

In re Horne and Co., 23 Am. B. R. 590.

In re Fisk and Robinson (D. C. N. Y.), 34 Am. B. R. 194.

When defective in some substantial particular the proof may be amended even after the expiration of the year.

In re Kessler and Co. (C. C. A. 2d Cir.), 25 Am. B. R. 512; 184 Fed. 51; 107 C. C. A. 13; rev'g (s. c.) 23 Am. B. R. 901; 176 Fed. 647.

May be amended by itemizing though year has expired.

In re Creasinger, 17 Am. B. R. 538; 145 Fed. 224.

Hutchinson v. Otis (U. S. Sup.), 10 Am. B. R. 135; 190 U. S. 552; 47 L. Ed. 1179; aff'g s. c. 8 Am. B. R. 382; 115 Fed. 937.

Brown v. O'Connell (C. C. A. 9th Cir.), 29 Am. B. R. 653; 200 Fed. 229; 118 C. C. A. 415.

When assignment of unfiled claim is filed within the year, the claim may be amended after the year.

Bennett v. American Credit Indemnity Co. (C. C. A. 6th Cir.), 20 Am. B. R. 258; 159 Fed. 624; 86 C. C. A. 614.

**Amendment of proof not filed in regular form with referee during the year.**

In re Salvator Brewing Co. (C. C. A. 2d Cir.), 28 Am. B. R. 56; 193 Fed. 989; 113 C. C. A. 626; aff'g s. c. 26 Am. B. R. 21; 188 Fed. 522.

In re Kessler (C. C. A. 2d Cir.) (*supra*).

In re Basha and Son (C. C. A. 2d Cir.), 27 Am. B. R. 435; 200 Fed. 951; 119 C. C. A. 335; rev'g s. c. 27 Am. B. R. 435; 193 Fed. 151.

In re Hamilton Automobile Co. (C. C. A. 7th Cir.), 31 Am. B. R. 205; 209 Fed. 596; 126 C. C. A. 418.

Powell v. Leavitt (C. C. A. 1st Cir.), 18 Am. B. R. 10; 150 Fed. 89; 80 C. C. A. 43.

In re Fairlamb Co., 28 Am. B. R. 515; 199 Fed. 278.

See In re Lathrop, Haskins and Co. (C. C. A. 2d Cir.), 28 Am. B. R. 756; 197 Fed. 164; 116 C. C. A. 601.

In re Booth (D. C. N. Y.), 33 Am. B. R. 183; 216 Fed. 575.

Letter to receiver in bankruptcy not sufficient.

In re Thompson (D. C. N. J.), 34 Am. B. R. 242; 222 Fed. 167; aff'd, 36 Am. B. R. 190; 227 Fed. 981.

**"Liquidated by litigation."**

In re Landis, 19 Am. B. R. 420; 156 Fed. 318.

In re Strobel (D. C. N. Y.), 20 Am. B. R. 884; 160 Fed. 916.

In re Keyes, 20 Am. B. R. 183; 160 Fed. 763.

In re Noel (Powell v. Leavitt) (C. C. A. 1st Cir.), 18 Am. B. R. 10; 150 Fed. 89; 80 C. C. A. 43; rev'g 16 Am. B. R. 457; 144 Fed. 439.

In re Mertens and Co. (C. C. A. 2d Cir.), 16 Am. B. R. 825; 147 Fed. 177; 77 C. C. A. 473.

In re E. O. Thompson's Sons, 10 Am. B. R. 581; 123 Fed. 174.

In re Prindle Pump Co. (D. C. N. Y.), 10 Am. B. R. 405.

In re Damon and Co., 14 Am. B. R. 809.

In re Baird and Co., 18 Am. B. R. 228; 154 Fed. 215.

In re Coventry Evans Furniture Co. (D. C. N. Y.), 22 Am. B. R. 623; 171 Fed. 673.

In re Otto F. Lange Co. (D. C. Ia.), 22 Am. B. R. 414; 170 Fed. 114.

In re Salvator Brewing Co. (C. C. A. 2d Cir.), 28 Am. B. R. 56; 193 Fed. 989; 113 C. C. A. 626; aff'g s. c. 26 Am. B. R. 21; 188 Fed. 522.

In re Standard Telephone and Electric Co. (D. C. Wis.), 26 Am. B. R. 601; 186 Fed. 586.

In re Venstrom, 30 Am. B. R. 569; 205 Fed. 325.

Does not apply to litigation between third parties.

In re Daniel, 29 Am. B. R. 284.

When not allowed as "liquidated by litigation."

In re Prindle Pump Co. (D. C. N. Y.), 10 Am. B. R. 405.

In re Kemper, 15 Am. B. R. 675; 142 Fed. 210.

When agreement between litigants constitutes "liquidated by litigation."

First National Bank of Atlanta v. Cameron, 31 Am. B. R. 209; 209 Fed. 611; 126 C. C. A. 433.

When order of adjudication is appealed from and appeal is subsequently dismissed.

In re Lee (D. C. Pa.), 22 Am. B. R. 820; 171 Fed. 266.

Deficiency on foreclosure may not be proved after expiration of year. The debt should have been proved as a secured debt.

In re Sampter (C. C. A. 2d Cir.), 22 Am. B. R. 357; 170 Fed. 938; 96 C. C. A. 98.

The words "Liquidated by litigation" extend to claim of a surety on an appeal bond.

In re Lyons Beet Sugar Refining Co., 27 Am. B. R. 610; 192 Fed. 445.

Filing of proof of debt after compulsory surrender of preference allowed even though more than a year had expired, and referee may be compelled on motion to accept same.

In re John A. Baker Notion Co. (D. C. N. Y.), 24 Am. B. R. 808; 180 Fed. 922.

In re Clark, 24 Am. B. R. 388; 176 Fed. 955.

In re Elletson Co., 28 Am. B. R. 434; 193 Fed. 84.

Page v. Rogers (U. S. Sup.), 21 Am. B. R. 496; 211 U. S. 575; 53 L. Ed. 332; rev'g 15 Am. B. R. 502; 149 Fed. 194; 79 C. C. A. 153.

Union Central Life Ins. Co. v. Drake (C. C. A. 8th Cir.), 32 Am. B. R. 252; 214 Fed. 536; 131 C. C. A. 82.

In re Oppenheimer, 15 Am. B. R. 267; 140 Fed. 51.

Keppel v. Tiffin Savings Bank (U. S. Sup.), 13 Am. B. R. 552; 197 U. S. 356; 49 L. Ed. 790.

Sec. 57-n forbidding proof of claims subsequent to one year after adjudication cannot be taken to exclude amendments.

Hutchinson v. Otis-Wilcox and Co. (U. S. Sup.), 10 Am. B. R. 135; 190 U. S. 552; 47 L. Ed. 1179; aff'g 8 Am. B. R. 382; 115 Fed. 937.

In re Mowery, 22 Am. B. R. 239.

In re Crenshaw, 19 Am. B. R. 502; 156 Fed. 638.

Edelstein v. United States (C. C. A. 8th Cir.), 17 Am. B. R. 649; 149 Fed. 636; 79 C. C. A. 328.

#### Surrender of preferences.

Since amendment of 1903 confined to cases where a person receiving a preference had reasonable cause to believe that it was intended as such, and to transfers where the persons making them did so with fraudulent intent.

In re Bloch (C. C. A. 2d Cir.), 15 Am. B. R. 748; 142 Fed. 674; 74 C. C. A. 250.

In re Andrews (Hardy v. Gray) (C. C. A. 1st Cir.), 16 Am. B. R. 387; 144 Fed. 922; 75 C. C. A. 562; aff'g 14 Am. B. R. 247; 135 Fed. 599.



Off v. Hakes (C. C. A. 7th Cir.), 15 Am. B. R. 696; 142 Fed. 364; 73 C. C. A. 464.

In re Pfaffinger, 18 Am. B. R. 807; 154 Fed. 528.

In re Hines, 16 Am. B. R. 495; 144 Fed. 543.

Cooper v. Miller (C. C. A. 6th Cir.), 30 Am. B. R. 194; 203 Fed. 333; 121 C. C. A. 567.

Constam v. Haley (C. C. A. 6th Cir.), 30 Am. B. R. 650; 206 Fed. 260; 124 C. C. A. 128.

Election of Remedies. Estoppel by filing claim.

In re Jacob Berry and Co. (C. C. A. 2d Cir.), 23 Am. B. R. 27; 174 Fed. 409; 98 C. A. 360.

Thomas v. Taggart, 19 Am. B. R. 710; 209 U. S. 385; 52 L. Ed. 845; aff'g 17 Am. B. R. 467; 149 Fed. 176.

Du Vivier and Co. v. Gallice (C. C. A. 2d Cir.), 17 Am. B. R. 557; 149 Fed. 118; 80 C. C. A. 556.

In re Kenyon, 19 Am. B. R. 194; 156 Fed. 863.

# FORM No. 146.

## PROOF OF SECURED DEBT.

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER	} No. ....
OF	
..... <i>Bankrupt.</i>	

At ..... in said ..... District of ....., on the  
..... day of ....., A. D. 19...., came .....  
of ....., in the County of ....., State of .....  
in said ..... District of ..... and made oath, and says that  
the said ..... the person by (or against) .....  
..... whom a petition for adjudication of bankruptcy has  
been filed, ..... at and before the filing of said petition, and  
still ..... justly and truly indebted to said deponent in the sum of  
..... dollars:  
that the said debt exists upon



of which a ..... is hereto annexed; that the consideration of said debt is as follows:

.....

that the said debt ..... due on .....

.....

..... the average due date being ....., 19..;

and that no note has been received for the said debt nor any judgment rendered thereon except as aforesaid; that no part of said debt has been paid except .....

.....

that there are no set-offs or counterclaims to the same except.....

.....

that the only securities held by this deponent for said debt are the following:

.....

Creditor.

Subscribed and sworn to before me  
this ..... day of ..... 19...

(Official character.)

NOTES.

Claims of secured creditors.

Sections 57-(a), (e), construed.

In re Cramond, 17 Am. B. R. 22; 145 Fed. 966.

In re Hines, 16 Am. B. R. 495; 144 Fed. 543.

Gorman v. Wright (C. C. A. 4th Cir.), 14 Am. B. R. 135; 136 Fed. 164; 69 C. C.

A. 76.

Emerine v. Tarault (C. C. A. 6th Cir.), 34 Am. B. R. 55; 219 Fed. 68; 134 C. C.

A. 606.

Provability of secured claim accruing after filing of petition.

British and American Mortgage Co. v. Stuart (C. C. A. 5th Cir.), 31 Am. B. R. 465;

210 Fed. 425; 127 C. C. A. 157; rehearing denied, 31 Am. B. R. 544; 210 Fed. 430.

Holder of a mortgage upon a homestead a "secured creditor."

Fenley v. Poor (C. C. A. 6th Cir.), 10 Am. B. R. 377; 121 Fed. 739; 58 C. C. A. 21.

Creditor holding a note containing waiver of exemptions a secured creditor.

In re Meredith (D. C. Ga.), 16 Am. B. R. 331; 144 Fed. 230.

Cannot prove both debt and collateral therefor.

First National Bank of Beaumont v. Eason (C. C. A. 5th Cir.), 17 Am. B. R. 593;

149 Fed. 204; 79 C. C. A. 162.

In re Waterloo Organ Co., 20 Am. B. R. 110; 154 Fed. 657; 83 C. C. A. 481.

When rejected as a secured debt may be allowed to amend proof so as to come in as an unsecured creditor.

Seligman v. Gray (C. C. A. 1st Cir.), 35 Am. B. R. 516; 227 Fed. 417.

Marshalling securities after liquidation. *Sexton v. Dreyfus et al.* (U. S. Sup.), 25 Am. B. R. 363; 219 U. S. 339; 55 L. Ed. 244; rev'g *In re Kessler and Co.* (C. C. A. 2d Cir.), 24 Am. B. R. 287; 180 Fed. 979; 103 C. C. A. 582; and s. c. 22 Am. B. R. 606; 171 Fed. 751.

Secured claim allowed only for balance after deducting value of security.

In Pennsylvania, a mortgagee after foreclosure may not prove claim on the bond.

*In re Davis* (C. C. A. 3d Cir.), 23 Am. B. R. 446; 174 Fed. 556; 98 C. C. A. 338; aff'g s. c. 23 Am. B. R. 156.

Referee has power to determine validity of secured claim before sale of encumbered property.

*In re Quinn* (C. C. A. 8th Cir.), 21 Am. B. R. 264; 165 Fed. 144; 91 C. C. A. 178.

Application of security.

*Hiscock v. Varick Bank*, 18 Am. B. R. 1; 206 U. S. 28; 51 L. Ed. 945; aff'g *In re Mertens*, 15 Am. B. R. 362; 144 Fed. 818; 75 C. C. A. 548.

Creditor has a right in absence of instructions to the contrary to credit payments on an unsecured rather than on a secured debt.

*In re Johnson*, 11 Am. B. R. 138; 125 Fed. 838.

Secured by accommodation indorser.

*In re Noyes Bros.* (C. C. A. 1st Cir.), 11 Am. B. R. 506; 127 Fed. 286; 62 C. C. A. 218.

Priority over wage earner.

*In re Proudfoot*, 23 Am. B. R. 106; 173 Fed. 733.

Allowance of claim over \$500 as secured cannot be reviewed by Circuit Court of Appeals by petition to review, but only by appeal from the order.

*Grainger and Co. v. Riley* (C. C. A. 6th Cir.), 29 Am. B. R. 114; 201 Fed. 901; 120 C. C. A. 415.

#### Waiver of lien.

*Dunn Salmon Co. v. Pillmore*, 19 Am. B. R. 172; 56 Misc. (N. Y.) 546.

*In re Fisk and Robinson* (D. C. N. Y.), 34 Am. B. R. 194.

Vote of secured creditor.

*In re Columbia Iron Works*, 14 Am. B. R. 526; 142 Fed. 234.

*Brown v. City National Bank* (N. Y. Sup. Ct.), 26 Am. B. R. 638; 72 Misc. (N. Y.) 201; 131 N. Y. Supp. 92.

When mortgage creditor has proved his claim solely for the purpose of enforcing his lien against the proceeds of sale of the mortgaged property sold by the trustee, he does not become liable for proportionate share of the costs of the general administration of the estate.

*Mills v. Virginia-Carolina Lumber Co.* (C. C. A. 4th Cir.), 20 Am. B. R. 750; 164 Fed. 168; 90 C. C. A. 154.

Right of trustee to set aside transfer made as security.

*In re Sam Z. Lorch and Co.*, 28 Am. B. R. 784; 199 Fed. 944.

Allowance as secured claim under Minnesota statute for supplies furnished motor vehicle.

*In re McAllister-Newgord Co.* (D. C. Minn.), 27 Am. B. R. 459; 193 Fed. 265.

Mortgage withheld from the record.

*Fourth National Bank of Macon v. Willingham*, 32 Am. B. R. 159; 213 Fed. 219; 129 C. C. A. 563.

FORM No. 147.

PROOF OF DEBT DUE CORPORATION.

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER	}	No.....
OF		
..... <i>Bankrupt.</i>		

At ..... in said ..... district of .....  
on the ..... day of ....., A. D. 19.., came ....., of ..... in the  
County of ....., and State of ....., and made oath and  
says that he is ....., of the ....., a corporation  
incorporated by and under the laws of the State of ....., and  
carrying on business at ....., in the County of .....  
and State of ....., and that he is duly authorized to make  
this proof, and says that the said ....., the person by (or  
against) whom a petition for adjudication of bankruptcy has been filed, was  
at and before the filing of said petition, and still is justly and truly indebted  
to said corporation in the sum of ..... dollars; that  
the consideration of said debt is as follows:  
.....  
.....  
.....; that no part of said debt has been paid  
(except .....  
.....); that there are no set-offs or counterclaims to  
the same except .....  
.....  
and that said corporation has not, nor has any person by its order, or to the  
knowledge or belief of said deponent, for its use, had or received any manner of  
security for said debt whatever; that said debt is one existing in open account  
and ..... due on the ..... day of .....

19..., and no note has been received for such account, nor any judgment rendered thereon.

.....  
 .....  
 .....  
 ..... of said corporation.

Subscribed and sworn to before me this ..... day of  
 ....., A. D. 19...

[*Official character.*]

NOTES.

Proof by corporation should be made by treasurer. May be made through its agent or attorney when sufficient reason is shown why it is not made by treasurer, or if it has none, by the officer whose duties most nearly correspond to those of treasurer as provided by General Order No. XXI.

In re E. Reboulin Fils and Co., 19 Am. B. R. 215; 165 Fed. 245.

What not sufficient reason for such proof in case of foreign corporation. s. c.

When proof is not made by the treasurer insert the following clause:

"That the reason this proof is not made by the treasurer is that ..... etc. [stating reason], and that deponent is an officer of such corporation whose duties most nearly correspond to those of treasurer."

**FORM No. 148.**

[*Official.*]

**PROOF OF DEBT BY PARTNERSHIP.**

In the District Court of the United States,  
 for the ..... District of .....:  
 In Bankruptcy.

IN THE MATTER

OF

No.....

.....  
*Bankrupt.*

At ....., in said ..... district of .....,  
 on the ..... day of ....., A. D. 19..., came  
 ....., of ....., in the County of .....,

in said district of..... and made oath and says that he is  
 one of the firm of ..... consisting of himself and  
 ....., of ....., in the County of .....  
 and State of .....

.....  
 that the said ..... the person by (or against) whom a  
 petition for adjudication of bankruptcy has been filed, was at and before  
 the filing of said petition, and still is, justly and truly indebted to this  
 deponent's said firm in the sum of ..... dollars;  
 that the consideration of said debt is as follows:

.....  
 .....  
 .....; that no part of said debt has been paid  
 (except .....);  
 that there are no set-offs or counter-claims to the same (except .....  
 .....); and this deponent has not, nor has his said  
 firm, nor has any person by their order, or to this deponent's knowledge or  
 belief, for their use, had or received any manner of security for said debt what-  
 ever.\* That no note has been received for any part of said debt nor any judg-  
 ment rendered thereon.

.....,  
*Creditor.*

Subscribed and sworn to before me this  
 day of ..... A. D. 19...

.....,  
 .....  
 (Official character.)

\* See General Orders XXI, 1.



**FORM No. 149.**

[*Official.*]

**PROOF OF DEBT BY AGENT OR ATTORNEY.**

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p>.....</p> <p style="text-align: right;"><i>Bankrupt.</i></p>	}	No. ....
--	---	----------

At ....., in said ..... district of ....., on the  
..... day of ....., A. D. 19..., came .....,  
of ..... in the County of ....., and State of  
....., Attorney (or authorized Agent) of .....,  
of ..... in the County of ....., and State of  
....., and made oath and says that .....,  
the person by (or against) whom a petition for adjudication of bankruptcy  
has been filed, was at and before the filing of said petition, and still is justly  
and truly indebted to said ..... in the sum of .....  
dollars: that the consideration of said debt is as follows:

.....  
.....  
.....: that no part of said debt has been paid  
(except ..... ):  
.....

and that this deponent has not, nor has any person by his order, or to this  
deponent's knowledge or belief, for his use had or received any manner of  
security for said debt whatever. And this deponent further says, that this  
deposition can not be made by the claimant in person because

.....  
.....  
and that he is duly authorized by his principal to make this affidavit, and that  
it is within his knowledge that the aforesaid debt was incurred as and for the  
consideration above stated, and that such debt, to the best of his knowledge

and belief, still remains unpaid and unsatisfied;\* no note has been received for any part of said debt nor any judgment rendered thereon.

.....,  
Subscribed and sworn to before me this ..... day of  
....., A. D. 19...  
.....,  
(Official character.)

\* See General Orders XXI, 1.

**FORM No. 150.**  
[Official.]

**PROOF OF SECURED DEBT BY AGENT OR ATTORNEY.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER	} No. ....
OF	
..... <i>Bankrupt.</i>	

At ....., in said ..... district of ....., on the  
..... day of ....., A. D. 19..., came ..... of .....,  
in the County of ....., and State of ....., attorney  
(or authorized agent) of ....., in the County of .....,  
and State of ....., and made oath, and says that .....,  
the person by (or against) whom a petition for adjudication of bankruptcy  
has been filed was, at and before the filing of said petition, and still is, justly  
and truly indebted to the said ..... in the sum of .....  
dollars; that the consideration of said debt is as follows: .....  
.....  
that no part of said debt has been paid (except .....);  
that there are no set-offs or counter-claims to the same (except .....);  
and that the only securities held by said ..... for said debt  
are the following: .....  
.....

and this deponent further says that this deposition cannot be made by the claimant in person because .....

and that he is duly authorized by his principal to make this deposition, and that it is within his knowledge that the aforesaid debt was incurred as and for the consideration above stated.

That no note has been received for any part of said debt, nor any judgment rendered thereon .....

Subscribed and sworn to before me, this  
day of ....., A. D. 19...

(Official character.)

**FORM No. 151.**

**PROOF OF DEBT FOR TAXES BY MUNICIPALITY AND NOTICE TO REFEREE.**

In the District Court of the United States,  
for ..... District of .....

IN THE MATTER

OF

In Bankruptcy No. ....

Bankrupt.

At the City of ..... in said District of ....., on the  
..... day of ....., A. D. 19..., came .....,  
of the City of ....., in the County of ....., and  
State of ..... and made oath and says that he is the  
Receiver of Taxes of the City of ..... a domestic municipal  
corporation incorporated by and under the laws of the State of .....;  
that he is duly authorized to make this proof and says further that the said  
....., the person by (or against) whom a petition for adjudication  
in bankruptcy has been filed, was at and before the filing of said  
petition, and still is justly and truly indebted to said City of .....,  
in the sum of \$.....; that the consideration of said debt is as follows:  
The amount of arrears for personal taxes for the year 19.... imposed on  
said bankrupt together with interest thereon at the rate of ..... per cent.

per annum from the ..... day of ....., 19....; that no part of said debt has been paid (except .....); that there are no set-offs or counter-claims to the same, (except .....); that the said City of ..... has not nor has any person by its order or to the knowledge or belief of deponent, for its use, had or received any manner of security for said debt whatever; that no note has been received for said claim nor any part thereof nor any judgment rendered thereon, except as aforesaid.

.....,  
*Receiver of Taxes of the City*  
 of .....

Subscribed and sworn to before me this ..... day  
 of ....., A. D. 19...  
 .....

*Notary Public*

To Honorable ..... County.

*Referee in Bankruptcy.*

..... Street.

I hereby give you notice that the foregoing claim against ....., is a claim entitled to priority and you will please take notice that I appear as attorney for the claimant herein, and that you are required to serve all papers in this matter in any way affecting the above claim upon the undersigned at the Bureau for Collection of Arrears of Personal Taxes at ..... Street, City of .....

Yours, etc.,

.....,  
*Corporation Counsel.*

FORM No. 152.

PROOF OF PRIORITY CLAIM FOR WAGES.

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No. ....
---	---	----------

At ..... in said ..... district of .....  
on the ..... day of ..... A. D. 19..., came  
..... of ..... in the County of .....  
in said district of ..... and made oath, and says that  
.....

.....  
the person by (or against) whom a petition for adjudication of bankruptcy has  
been filed, was at and before the filing of said petition, and still is, justly and  
truly indebted to said deponent in the sum of ..... dollars;  
that the consideration of said debt is as follows:

wages as a ..... of said bankrupt earned from the  
..... day of ..... 19..., to the ..... day of .....  
19..., and within three months prior to filing of the petition herein and for  
which deponent claims priority of payment under Sec. 64 b (4) of the  
Bankruptcy Act.

That no part of said debt has been paid (except .....  
.....);  
that there are no set-offs or counter-claims to the same (except .....  
.....) and that deponent has not, nor has any person  
by his order, or to his knowledge or belief, for his use, had or received any  
manner of security for said debt whatever;\* that said debt is one existing in  
open account and ..... due on the ..... day of .....  
19..., and no note has been received for such account, nor any judgment  
rendered thereon.

.....  
*Creditor.*

\* See General Order, XXI, 1.



Subscribed and sworn to before me this

day of ....., A. D. 19...

.....,

(Official character.)

**FORM No. 153.**

**PROOF OF DEBT BY TRUSTEE IN BANKRUPTCY.**

United States District Court,

for the ..... District of .....

In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p>.....</p> <p style="text-align: right;"><i>Bankrupt.</i></p>	}	No. ....
--	---	----------

At the County of ....., in said ..... District of ..... on the ..... day of ....., 19..., comes ....., of the County of ....., in the city of ....., in said District of ..... and says that, (..... Company was a corporation incorporated by and under the laws of the State of ..... and carrying on business in the city of ..... County of ....., State of .....); that on or about the ..... day of ....., 19... a petition of involuntary bankruptcy was filed against said ..... in the office of the Clerk of the United States District Court for the ..... District of .....; that thereafter such proceedings were had on the said petition that the said ..... was duly adjudged a bankrupt on the ..... day of ..... 19...; that at a meeting of creditors of the said bankrupt, held at the office of ....., Referee in Bankruptcy, on the ..... day of ....., 19..., deponent was duly appointed Trustee of the estate of the above named bankrupt and required to file a bond in the penalty of .....; thereafter deponent duly qualified by filing a bond in the penalty required; that said bond was approved by the said referee and deponent has continued to act and is now acting as such trustee in bankruptcy; that ..... against whom (or which) a petition for adjudication in bankruptcy has been

filed, was at or before the filing of the said petition, and still is, justly and truly indebted to said deponent in the sum of \$.....; that the consideration of said debt is as follows: .....; that a statement of the said account is hereto annexed; that no part of said debt has been paid; that there are no set-offs or counter-claims to the same; that deponent has not, nor has any person by his order or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever; that no note has been received for the said debt, nor has any judgment been rendered thereon.

Subscribed and sworn to before me this  
day of ..... 19...

(Official character.)

**FORM No. 154.**

[Official.]

**AFFIDAVIT OF LOST BILL, OR NOTE.**

In the District Court of the United States for the ..... District  
of .....:  
In Bankruptcy.

IN THE MATTER  
OF

No. ....

Bankrupt.

On this ..... day of ....., A. D. 19.., at ....., came ....., of ....., in the County of ....., and State of ....., and makes oath and says that the bill of exchange [*or* note], the particulars whereof are underwritten has been lost under the following circumstances, to wit, ..... and that he, this deponent, has not been able to find the same; and this deponent further says that he has not, nor has the said ....., or any person or persons to their use, to this deponent's knowledge or belief, negotiated the said bill [*or* note], nor in any manner parted with or assigned

the legal or beneficial interest therein, or any part thereof; and that he, this deponent, is the person now legally and beneficially interested in the same.

*Bill or note above referred to.*

Date.	Drawer or Maker.	Acceptor.	Sum.

.....,  
Subscribed and sworn to before me, this  
day of ..... A. D. 19...  
.....,  
(Official character.)

**FORM No. 155.**  
[Official.]

**GENERAL LETTER OF ATTORNEY IN FACT.**

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER  
OF  
.....  
Bankrupt.

No.....

To .....:  
.....  
of ..... in the County of ..... and State of .....  
do hereby authorize you, or any one of you, to attend the meeting or meetings  
of creditors of the bankrupt ..... aforesaid, at a court of bank-  
ruptcy, wherever advertised or directed to be holden, on the day at the hour  
appointed and notified by said court in said matter, or at such other place  
and time as may be appointed by the Court for holding such meeting or meet-  
ings, or at which such meeting or meetings, or any adjournment or adjourn-

ments thereof may be held, and then and there from time to time, and so often as there may be occasion, for ..... and in ..... name to vote for or against any proposal or resolution that may be then submitted under the Acts of Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of said bankrupt ....., and for ..... to assent to such appointment of trustee; and with like powers to attend and vote at any other meeting or meetings of creditors or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt ..... in satisfaction of ..... debts, and to receive payment of dividends, and of money due ..... under any composition, and for any other purpose in ..... interest whatever, with full power of substitution.

In witness whereof ..... have hereunto signed ..... name ..... and affixed ..... seal ..... the ..... day of ..... A. D. 19...

or, [In witness whereof, the said corporation has caused these presents to be signed and its corporate seal to be affixed the ..... day of ....., A. D. 19....]

Signed, sealed and delivered  
in presence of

.....  
\*Acknowledged before me this.....  
day of ..... A. D. 19...

.....  
.....  
(Official character.)

\* See General Orders, XXI, 5.

### FORM No. 156.

#### ACKNOWLEDGMENT TO LETTER OF ATTORNEY BY MEMBER OF PARTNERSHIP.

STATE OF..... }  
County of..... } ss.,

On the ..... day of ..... 19... before me personally came ..... to me known and known to me to be one of the persons described in and who executed the foregoing instrument and who duly acknowledged that he executed the same, and who being by me duly sworn, did depose and say that he is a member of said partnership and is duly authorized to execute same on behalf of his said firm.

.....  
(Official character.)

**FORM No. 157.****ACKNOWLEDGMENT TO LETTER OF ATTORNEY BY CORPORATION.**

STATE OF..... }  
 County of..... } ss.:

On the ..... day of ....., in the year 19.., before me personally came ..... to me known, who being by me duly sworn, did depose and say that he resided in .....; that he is the ..... of the ..... the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

.....,  
 (Official character.)

**FORM No. 158.**

[Official.]

**SPECIAL LETTER OF ATTORNEY IN FACT.**

In the District Court of the United States,  
 for the ..... District of .....:  
 In Bankruptcy.

IN THE MATTER

OF

No. ....

Bankrupt.

To .....:

.....  
 of ..... in the County of ..... and State of .....  
 do hereby authorize you, or any one of you, to attend  
 the meeting of creditors in this matter, advertised or directed to be holden at



on the ..... day of ....., 19..., before  
 .....  
 .....  
 or any adjournment thereof, and then and there ..... for  
 ..... and in ..... name to vote for or against  
 any proposal or resolution that may be lawfully made or passed at such  
 meeting or adjourned meeting, and in the choice of trustee or trustees of the  
 estate of said bankrupt.

In witness whereof ..... have hereunto signed .....  
 name ..... and affixed ..... seal ..... the  
 ..... day of ..... A. D. 19..

[or, in case of corporation modify as in Form No. 155.]

Signed, sealed and delivered  
 in presence of

.....  
 .....  
 \*Acknowledged before me this

..... day of ..... A. D. 19....

.....  
 .....  
 (Official character.)

\* See General Orders, XXI, 5.

# NOTES.

## Letter of Attorney.

Requirement of General Order XXI (5) as to oath in partnership cases.

In re Blue Ridge Packing Co. (D. C. Pa.), 11 Am. B. R. 36; 125 Fed. 619.

In re Finlay Bros. (D. C. N. Y.), 3 Am. B. R. 738; 104 Fed. 675.

May be proved or acknowledged before a Justice of the Peace under Sec. 20 of  
 Bankruptcy Act and not limited by General Order XXI (5) to a referee, United States  
 commissioner or notary public.

In re Roy (D. C. N. Y.), 26 Am. B. R. 4; 185 Fed. 551.

In re Sugeneheimer, 1 Am. B. R. 425; 91 Fed. 744.

Attorney-at-law may not vote on claim unless authorized by duly executed power  
 of attorney for that purpose. No presumption of authority.

In re Scully, 5 Am. B. R. 716; 108 Fed. 372.

In re Blankfein, 3 Am. B. R. 165; 97 Fed. 191. In re Capitol Trading Co. Inc.,  
 30 Am. B. R. 339.

Corporation organized as a board of trade not permitted to represent creditor under  
 the prohibition of New York statute forbidding corporations to practice law and  
 under General Order IV.

L. Meisel and Co. v. National Jewelers' Board of Trade (N. Y. App. Tr.), 90 Misc.  
 (N. Y.) 19.

When attorney disqualified from voting under power of attorney.

In re Columbia Iron Works, 14 Am. B. R. 526; 142 Fed. 234.

Acknowledgment before commissioner of deeds of letters running to himself not  
 permitted.

In re Grossman (D. C. N. Y.), 34 Am. B. R. 32; 225 Fed. 1020.

War Revenue Tax (1914) stamp necessary on powers of attorney to vote.

In re Hawley (D. C. N. Y.), 220 Fed. 372.

In re Capitol Trading Co. Inc., 36 Am. B. R. 339.

## FORM No. 159.

## OBJECTIONS TO PROOF OF DEBT.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No.....
---	---	---------

To ....., Esq., Referee in Bankruptcy.

I, ..... Trustee in this proceeding, [or a creditor herein]  
do hereby object to the proof of debt filed on ....., 19..., by  
..... an alleged creditor for \$..... That said objec-  
tion is made on the following grounds:

[Here set forth objections.]

I respectfully request that said proof of debt be rejected and disallowed and  
no dividend declared upon same.

Dated ....., 19...

.....,  
*Trustee.*

[Verification, if required or desired.]

## NOTES.

**Form of objections.**

*In re* Royce Dry Goods Co., 13 Am. B. R. 257; 133 Fed. 100.

*In re* Linton, 7 Am. B. R. 676.

*Orr v. Park* (C. C. A. 5th Cir.), 25 Am. B. R. 544; 183 Fed. 683; 106 C. C. A. 33.

*Spencer v. Lowe* (C. C. A. 8th Cir.), 29 Am. B. R. 876; 198 Fed. 961; 117 C. C. A.

497.

Written objections not necessary.

*Embry v. Bennett* (C. C. A. 6th Cir.), 20 Am. B. R. 651; 162 Fed. 139; 89 C. C. A.

163.

*In re* Cannon (D. C. Pa.), 14 Am. B. R. 114; 133 Fed. 837.

See *In re* Shaw, 6 Am. B. R. 499; 109 Fed. 780.

While they should be specific, need not be under oath.

*In re* Wooten (D. C. N. Car.), 9 Am. B. R. 247; 118 Fed. 670.

Any creditor may plead Statute of Limitations against allowance of claim.

*In re* Lafferty and Bro., 10 Am. B. R. 290; 122 Fed. 558.

Duty of trustee to so plead.

In re Wooten, 9 Am. B. R. 247; 118 Fed. 670.

Objection may be made at any time before estate is closed.

In re Canton Iron and Steel Co., 28 Am. B. R. 791; 197 Fed. 767.

But see, In re Globe Laundry, 28 Am. B. R. 831; 198 Fed. 365.

#### **Burden of proof.—Upon objector.**

In re Doty (D. C. N. Y.), 5 Am. B. R. 58.

In re Castle Braid Co. (D. C. N. Y.), 17 Am. B. R. 143; 145 Fed. 224. .

In re Carter, 15 Am. B. R. 126; 138 Fed. 846.

In re Sumner, 4 Am. B. R. 123; 101 Fed. 224.

In re Pfaffinger, 18 Am. B. R. 807; 154 Fed. 528.

Sworn proof is *prima facie* evidence of its allegations, even when it is denied.

Whitney v. Dresser (U. S. Sup.), 15 Am. B. R. 326; 200 U. S. 532; 50 L. Ed. 584; aff'g 13 Am. B. R. 747; 135 Fed. 495; 68 C. C. A. 207.

In re T. A. McIntyre and Co. (C. C. A. 2d Cir.), 24 Am. B. R. 1; 174 Fed. 627; 98 C. C. A. 381.

In re Montgomery, 25 Am. B. R. 431; 185 Fed. 955.

See, however, In re Hudson Porcelain Co. (D. C. N. J.), 35 Am. B. R. 18; 225 Fed. 325.

But not to be regarded as self-proving unless relied upon.

In re T. A. McIntyre and Co. (*supra*).

When objections to allowance of claim *res adjudicata*.

Ayres v. Cone et al. (*infra*).

An unsecured creditor may object to proof of another creditor.

In re Hatem, 20 Am. B. R. 470; 161 Fed. 895.

Ayres v. Cone (C. C. A. 8th Cir.), 14 Am. B. R. 739; 138 Fed. 778; 71 C. C. A. 144.

See, In re Lewensohn (C. C. A. 2d Cir.), 9 Am. B. R. 368; 121 Fed. 538; 57 C. C.

A. 600.

In re Arnold and Co., 13 Am. B. R. 320; 133 Fed. 789.

In re Canton Iron and Steel Co. (*supra*).

Mere filing of objections should not exclude *bona fide* claimants from voting.

In re Kelly Dry Goods Co., 4 Am. B. R. 528; 102 Fed. 747.

Should be heard promptly.

Whitney v. Dresser (U. S. Sup.) (*supra*).

Where referee has disallowed proof of debt, judgment of District Court on review.

Moore v. Crandall (C. C. A. 9th Cir.), 30 Am. B. R. 517; 205 Fed. 689; 124 C. C.

A. 11.

In re John H. Livingston Co. (C. C. A. 2d Cir.), 16 Am. B. R. 385; 144 Fed. 971; 75

C. C. A. 282.

#### **Allowance of claims.**

Claims of relatives rigidly scrutinized.

Ohio Valley Bank Co. v. Mack (C. C. A. 6th Cir.), 20 Am. B. R. 40; 163 Fed. 155; 89 C. C. A. 605; aff'g 20 Am. B. R. 919.

In re Rider (D. C. N. Y.), 3 Am. B. R. 192; 96 Fed. 811.

In re Wooten, 9 Am. B. R. 247; 118 Fed. 670.

In re Brewster (D. C. N. Y.), 7 Am. B. R. 486.

Baumhauer v. Austin (C. C. A. 5th Cir.), 26 Am. B. R. 385; 186 Fed. 260; 108 C. C. A. 306; rev'g In re Baumhauer, 24 Am. B. R. 750; 179 Fed. 966.

When claim of wife disallowed. In re Gervin, 20 Am. B. R. 490; 160 Fed. 197.

In re Kaufman (N. Y.), 5 Am. B. R. 104; 104 Fed. 768.

In re Tucker (D. C. Mass.), 17 Am. B. R. 247; 148 Fed. 928.

In re Winkels (D. C. Wis.), 12 Am. B. R. 696; 132 Fed. 590.

See *In re Foss*, 17 Am. B. R. 439; 147 Fed. 790.

Claim of wife's estate recognized and allowed in Vermont under certain conditions.

*In re Hill* (D. C. Vt.), 27 Am. B. R. 146; 190 Fed. 390.

But allowed in Pennsylvania.

*In re Domenig* (D. C.), 11 Am. B. R. 552; 128 Fed. 146.

Loan from separate estate.

*James v. Gray* (Mass.) (C. C. A. 1st Cir.), 12 Am. B. R. 573; 131 Fed. 401; 65 C. C. A. 385.

Liability for unpaid subscription to stock cannot be set off against debt due from corporation as not being mutual debts.

*In re Howe Mfg. Co.* (D. C. Ky.), 27 Am. B. R. 477; 193 Fed. 524.

### FORM No. 160.

#### PETITION THAT PROOF OF DEBT BE RE-EXAMINED.

United States District Court,

for the ..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

Bankrupt.

To ....., Esq., Referee in Bankruptcy:

Your petitioner respectfully shows:

That he is the trustee herein, duly qualified and acting. That a proof of debt of ..... of ..... claiming to be a creditor of the said ..... for \$. .... was filed herein on the ..... day of ....., 19.., and on the ..... day of ....., 19.., duly allowed.

That the same should not have been allowed for the following reasons:....

That the attorney for said claimant is ....., Esq., of .....

That no previous application has been made for the order asked for herein.

Wherefore, your petitioner prays that the said proof of debt be re-examined, rejected and expunged (or reduced.)

Petitioner.

[Verification.]

## NOTES.

**General Order XXI, 6.****Sufficiency of petition to re-examine.**

Need not allege facts sufficient to defeat claim. Only necessary to allege facts which, if true, are sufficient cause of reconsideration.

In re George Watkinson and Co., 12 Am. B. R. 370; 130 Fed. 218.

In re Ankeny, 4 Am. B. R. 72; 100 Fed. 614; 2 N. B. N. Rep. 249.

Trustee only one authorized to institute proceedings.

In re Sully & Co. (D. C. N. Y.), 15 Am. B. R. 304; 142 Fed. 895; modified, 13 Am. B. R. 124; 152 Fed. 619.

In re Lewensohn (C. C. A. 2d Cir.), 9 Am. B. R. 368; 121 Fed. 538; 57 C. C. A. 600.

Trustee only one authorized to appeal from order allowing claim.

Chatfield et al. v. O'Dwyer et al. (C. C. A. 8th Cir.), 4 Am. B. R. 313; 101 Fed. 797; 42 C. C. A. 30.

Foreman v. Burleigh et al. (C. C. A. 1st Cir.), 6 Am. B. R. 230; 109 Fed. 313; 48 C. C. A. 376.

Notice should be sent by referee to claimant.

In re Stoevers, 5 Am. B. R. 250; 105 Fed. 355.

Trustee may be compelled to take action to reconsider claim or to permit objecting creditors to act in his name.

In re Stern (C. C. A. 8th Cir.), 16 Am. B. R. 510; 144 Fed. 956; 76 C. C. A. 10.

In re Lewensohn (*supra*).

In re Levy, 7 Am. B. R. 56.

In re Mexico Hardware Co., 28 Am. B. R. 736; 197 Fed. 650.

Creditor moving for re-examination of claim not bound to indemnify claimant under General Order X.

In re Elk Valley Coal Mining Co., 31 Am. B. R. 545; 210 Fed. 386.

Compare In re Geo. Watkinson & Co. (D. C. Pa.), 12 Am. B. R. 370; 130 Fed. 218.

Where there is no trustee, bankrupt may move to reconsider.

In re Ankeny, 4 Am. B. R. 72; 100 Fed. 614; 2 N. B. N. Rep. 249.

Stockholders whose claims have been expunged may not.

In re Pittsburg Lead and Zinc Co. (Cons.), 28 Am. B. R. 880; 198 Fed. 316; *rev'd*, Rosenbaum v. Dutton (C. C. A. 8th Cir.), 30 Am. B. R. 155; 203 Fed. 838; 122 C. C. A. 156.

Right of creditor to expunge not higher than that of the bankrupt.

In re E. J. Arnold & Co., 13 Am. B. R. 320; 133 Fed. 789.

Trustee may institute a joint proceeding against several creditors.

In re Lyon, 7 Am. B. R. 61.

But better practice is to make separate proceeding of each claim under objection.

**Burden of proof.**

On petitioner.

In re Doty, 5 Am. B. R. 58.

No rule making sworn objections to a claim *prima facie* evidence of their truth (*dict.*). In re Goble Boat Co. (D. C. N. Y.), 27 Am. B. R. 48; 190 Fed. 92.

Effect of failure of claimant to file answer.

In re Lewis, Eck & Co. (D. C. Pa.), 18 Am. B. R. 657; 153 Fed. 495.

In re Goble Boat Co. (*supra*).

Compare In re Docker-Foster Co. (D. C. Pa.), 10 Am. B. R. 584; 123 Fed. 190.

When denied for laches or want of good faith.

In re Sully & Co. (*supra*).

In re Hamilton Furniture Co., 8 Am. B. R. 588; 116 Fed. 115.

In re Hinckel Brewing Co. (D. C. N. Y.), 10 Am. B. R. 484; 123 Fed. 942.

In re Globe Laundry (D. C. Tenn.), 28 Am. B. R. 831; 198 Fed. 365.

No collateral attack on claim upon creditors' petition to remove trustee.



In re Roanoke Furnace Co. (D. C. Pa.), 18 Am. B. R. 661; 152 Fed. 846.  
Defense of usury available to trustee.  
In re Stern (C. C. A. 8th Cir.), 16 Am. B. R. 510; 144 Fed. 956; 76 C. C. A. 10.  
In re Kellogg (C. C. A. 2d Cir.), 10 Am. B. R. 7; 121 Fed. 332; 57 C. C. A. 547; aff'g 113 Fed. 120.  
See, Gray v. Grand Forks Mercantile Co. (C. C. A. 8th Cir.), 14 Am. B. R. 780; 138 Fed. 344; 70 C. C. A. 634.  
So also as to Statute of Limitations.  
In re Wooten, 9 Am. B. R. 247; 118 Fed. 670.  
In re Kuffler (D. C. N. Y.), 18 Am. B. R. 587; 153 Fed. 667.  
In re George Zorn & Co. (D. C. Pa.), 27 Am. B. R. 433; 193 Fed. 299.  
Bankrupt may not waive after filing of the petition to the prejudice of trustee.  
In re George Zorn & Co. (*supra*).  
Where an order of referee sustains objection to claim upon *prima facie* case of claimant and the District Court reverses order and "allows claim as filed," the latter order is erroneous in that the matter should be sent back to referee to allow trustee to offer testimony in opposition to claim.  
In re John H. Livingston Co. (C. C. A. 2nd Cir.), 16 Am. B. R. 385; 144 Fed. 971; 75 C. C. A. 232.  
Reconsideration of claim after surrender of preference.  
In re Hamilton Automobile Co. (C. C. A. 7th Cir.), 31 Am. B. R. 205; 209 Fed. 596; 126 C. C. A. 418.  
No attorney's docket fee for hearing before referee on determination of claim.  
Peck v. Richter (C. C. A. 8th Cir.), 33 Am. B. R. 11; 217 Fed. 880; 133 C. C. A. 590.

FORM No. 161.

ORDER FOR RE-EXAMINATION OF CLAIM.

United States District Court,  
..... District of .....

IN THE MATTER

OF

.....  
*Bankrupt.*

Upon reading and filing the petition of ....., the trustee herein, duly verified, praying for a re-examination of the claim of ....., it is

Ordered that such re-examination be had and it is further ordered that the hearing on such re-examination be fixed for the ..... day of ....., 19..., at .... o'clock in the ....noon, at my office, No. .... Street, .....  
Dated ....., 19....

.....,  
*Referee in Bankruptcy.*

FORM No. 162.

NOTICE TO CLAIMANT THEREON.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p>.....</p> <p style="text-align: right;"><i>Bankrupt.</i></p>	}	No. ....
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To ..... and ....., Esq., his attorney:

You will please take notice that ..... the Trustee herein, has filed a petition duly verified asking that your claim against the above named bankrupt, be re-examined, rejected and expunged (or reduced) for the following reasons: .....  
.....  
and that pursuant to order for such re-examination a hearing will be had on such petition at my office, No. .... Street in the city of ..... in said District on the ..... day of ....., 19..., at ..... o'clock ..M.

Dated ....., 19...

.....,  
*Referee in Bankruptcy.*

FORM No. 163.

NOTICE BY ORDER TO SHOW CAUSE. (SUBSTITUTE FOR FORM NO. 162.)

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER  OF  .....  <i>Bankrupt.</i>	} No.....
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On reading and filing the petition of ..... the trustee of the estate of the above named bankrupt, verified the ..... day of ....., 19..., hereto annexed, and on motion of ....., Esq., attorney for the said Trustee, it is

Ordered, that ....., an alleged creditor of the estate of the above named bankrupt, show cause before me at my office, No. .... Street, city of ..... on the ..... day of ....., 19..., at ..... o'clock ..M. why the proof of claim heretofore filed by said alleged creditor in my office, be not re-examined, rejected and expunged (or reduced) for the reasons stated in said petition as follows:.....

And it is further ordered, that service of the said petition and of this order (by mailing copies of the same to the said alleged creditor at his address), on or before the ..... day of ....., 19..., shall be sufficient.

Dated ....., 19...  
.....,  
*Referee in Bankruptcy.*

FORM No. 164.

ORDER EXPUNGING OR REDUCING PROOF OF DEBT.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	<p>No. ....</p>
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The trustee of the estate of the above named bankrupt having filed in the office of the referee a duly verified petition praying that the proof of debt heretofore filed herein by ..... an alleged creditor for \$..... be re-examined, rejected and expunged (or reduced), and an order having been made herein that a hearing be had thereon on the ..... day of ....., 19.., and due notice of said hearing having been given to said claimant, and to the said trustee, and the said claimant having appeared by counsel on said day, and the evidence submitted (or testimony having been taken thereon), now on reading and filing the trustee's said petition and upon all the proceedings had herein and after hearing....., Esq., attorney for the said trustee, in support of said petition and ....., Esq., in opposition thereto, it is

Ordered, that the prayer of said petition be and the same is hereby granted, and it is further

Ordered, that said claim of ..... be and it hereby is rejected, disallowed and expunged from the list of claims upon the record in this case. (or that said claim of ..... be and it hereby is reduced to \$..... and allowed at said amount upon the list of claims herein.)

Dated ....., 19...

.....,  
*Referee in Bankruptcy.*

**FORM No. 165.**

**ORDER ALLOWING PROOF OF DEBT.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER  OF  .....  <i>Bankrupt.</i>	} No.....
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..... having filed in the office of the Referee a proof of debt against the estate of the above named bankrupt in the sum of \$....., and the said proof of debt having been objected to by (the Trustee or certain creditors) and the objections having come on for a hearing before me, and testimony having been offered in behalf of ..... in support of the said claim, and by (the Trustee or certain objecting creditors) in opposition thereto, and due deliberation having been had, and after hearing ....., Esq., attorney for the said claimant, in support of the said claim, and ....., Esq., attorney for (Trustee or objecting creditors), in opposition thereto, it is

Ordered, that the said claim be and the same is hereby allowed in the sum of \$..... and the objections thereto dismissed.

Dated ....., 19...

.....,  
*Referee in Bankruptcy.*

**NOTES.**

An order allowing a claim is an adjudication as to issues involved and not subject to collateral attack.

Carr v. Barnes, 138 Mo. App. 264; 120 S. W. 705.

**Provable claims.**

Provability depends upon status at time petition is filed.

In re Pettingill, 14 Am. B. R. 728; 137 Fed. 143.

In re Reading Hosiery Co. (D. C. Pa.), 22 Am. B. R. 562; 171 Fed. 195.

In re Burka, 5 Am. B. R. 12; 107 Fed. 674.

In re Adams, 12 Am. B. R. 368; 130 Fed. 381.

In re Bevins et al. (C. C. A. 2nd Cir.), 21 Am. B. R. 344; 165 Fed. 676; 91 C. C. A 302.

In re Simon (D. C. N. Y.), 28 Am. B. R. 611; 197 Fed. 105.

Judgment in conversion a provable claim.



In re Hale, 20 Am. B. R. 633; 161 Fed. 387.

Crawford v. Burke, 12 Am. B. R. 659; 195 U. S. 176; 49 L. Ed. 147; rev'g 11 Am. B. R. 15; 291 Ill. 581; In re Neff (C. C. A. 6th Cir.), 19 Am. B. R. 23; 157 Fed. 57; 84 C. C. A. 561.

Claim for costs.

In re Harnden (D. C. N. M.), 29 Am. B. R. 504; 200 Fed. 172.

Indorsed promissory note.

In re Simon (*supra*).

In re Smith (D. C. R. I.), 17 Am. B. R. 112; 146 Fed. 923.

Swarts v. Fourth Nat. Bank of St. Louis, 8 Am. B. R. 673; 117 Fed. 1; 54 C. C. A.

387.

Failure to notify indorser.

In re T. A. McIntyre & Co. (D. C. N. Y.), 28 Am. B. R. 459.

Judgment for breach of promise to marry provable. In re Fife, 6 Am. B. R. 258;

109 Fed. 880.

In re McCauley, 4 Am. B. R. 122; 101 Fed. 223.

Creditor who holds voidable preference.

Stevens v. Nave McCord Mercantile Co. (C. C. A. 8th Cir.), 17 Am. B. R. 609; 150 Fed. 71; 80 C. C. A. 25.

Pledgee of a note allowed to prove for full amount of note, if necessary to cover claim though amount of claim due is less.

In re Anger Baking Co. (C. C. A. 2nd Cir.), 36 Am. B. R. 261.

Right of mortgagee to prove claim.

In re Beaver Knitting Mills (C. C. A. 2nd Cir.), 18 Am. B. R. 528; 154 Fed. 320;

83 C. C. A. 240.

Owner of bond secured by mortgage liquidated after petition filed has a provable claim.

In re Fitzgerald, 26 Am. B. R. 773; 191 Fed. 95.

Right of bondholder over mortgage trustee to prove.

Mackay v. Randolph Macon Coal Co. (C. C. A. 8th Cir.), 24 Am. B. R. 719; 178 Fed. 881; 102 C. C. A. 115.

Note given upon previous composition provable.

In re C. H. Bennett Shoe Co., 20 Am. B. R. 704; 162 Fed. 691.

A charge for the preparation of a general assignment for creditors, made within the four months period may be proved as an unsecured claim.

Randolph v. Scruggs, Trustee (U. S. Sup.), 10 Am. B. R. 1; 190 U. S. 533; 47 L. Ed. 1165.

Stockholders may not after bankruptcy rescind their contracts and prove claims against estate for money paid for such stock.

Scott v. Abbott (C. C. A. 8th Cir.), 20 Am. B. R. 335; 160 Fed. 573; 87 C. C. A. 475. "Fixed liability."

Phenix Nat. Bank v. Waterbury and ano. (N. Y. Ct. of App.), 23 Am. B. R. 250; 197 N. Y. 161; aff'g 20 Am. B. R. 140.

Verdict in action for damages for personal injuries where no judgment has been entered not provable as not being a "fixed liability" within Sec. 63-a (1).

In re Ostrom (D. C. Minn.), 26 Am. B. R. 273; 185 Fed. 988.

Subscription under contract a provable debt for full subscription price.

In re Buffalo Mirror & Beveling Co., 15 Am. B. R. 122.

Subscription to mercantile agency.

In re Glick et al. (D. C. N. Y.), 25 Am. B. R. 871; 184 Fed. 967.

Bond to secure payment of annuity provable.

Cobb v. Overman (C. C. A. 4th Cir.), 6 Am. B. R. 324; 109 Fed. 65; 48 C. C. A. 223; 54 L. R. A. 369.

**Contracts for Cash Conveying Systems; "Fixed liability."**

In re Caswell-Massey Co. (D. C. N. Y.), 31 Am. B. R. 426; 208 Fed. 571.

In re Kugler Syndicate, No. 3422 (S. D. N. Y.). Not reported.

In re Miller Bros. Grocery Co., 31 Am. B. R. 430; 208 Fed. 573; rev'd, s. c. (C. C. A. 6th Cir.), 33 Am. B. R. 704; 219 Fed. 851; 135 C. C. A. 521.

See, Lamson Consol. Store Service Co. v. Bowland, 114 Fed. 639; 52 C. C. A. 335.

Wilson v. Penn. Trust Co., 8 Am. B. R. 169; 114 Fed. 742; 52 C. C. A. 374.

In re Merwin and Willoughby Co. (D. C. N. Y.), 30 Am. B. R. 485; 206 Fed. 116.

**Contingent claims.**

In re James Dunlap Carpet Co., 20 Am. B. R. 882; 163 Fed. 541.

In re Smith, 17 Am. B. R. 112; 146 Fed. 923.

Cotting v. Hooper Lewis & Co. (Mass. Sup. Ct.), 34 Am. B. R. 23.

Bankrupt's liability as endorser of commercial paper.

Whitwell v. Wright, 23 Am. B. R. 747; 136 App. Div. (N. Y.) 246; 120 N. Y. Supp. 1065.

**Non-provable claims.**

Claim which has been expressly waived or forfeited to the bankrupt.

In re Howard, 4 Am. B. R. 69.

A claim for damages for tort not connected with any contractual liability and not reduced to judgment before institution of the bankruptcy proceedings not provable.

In re Hirschmann, 4 Am. B. R. 715; 104 Fed. 69.

In re Cushing, 6 Am. B. R. 22.

Brown and Adams v. United Button Co. (C. C. A. 3d Cir.), 17 Am. B. R. 565; 149 Fed. 48; 79 C. C. A. 70; aff'g 15 Am. B. R. 390; 140 Fed. 495.

Claim for damages for death of intestate by wrongful act.

In re New York Tunnel Co. (C. C. A. 2d Cir.), 20 Am. B. R. 25; 159 Fed. 688; 86 C. C. A. 556.

Assault and battery.

Beers v. Hanlin, 3 Am. B. R. 745; 99 Fed. 695.

Judgment for damages for personal injuries for wrongful act when recovered after filing of the petition.

In re Crescent Lumber Co., 19 Am. B. R. 112; 154 Fed. 724.

In re Wigmore, 10 Am. B. R. 661.

See, In re Putnam (D. C. Cal.), 27 Am. B. R. 923; 193 Fed. 464.

Amount of fine imposed for crime in State court.

In re Moore, 6 Am. B. R. 590; 111 Fed. 145.

People v. Sheriff of Kings County (dictum), 31 Am. B. R. 84; 206 Fed. 566.

Judgment by State for violation of Agricultural Law.

In re Abrahamson and Fichhandler (C. C. A. 2d Cir.), 32 Am. B. R. 156; 210 Fed. 878; 127 C. C. A. 462.

Claim for penalty. Actual damage sustained only.

In re Bevier Wood Pavement Co. (D. C. N. Y.), 19 Am. B. R. 462; 156 Fed. 583.

In re Southern Steel Co., 25 Am. B. R. 358; 183 Fed. 498.

In re Wenatchee Heights Orchard Co. (D. C. Wash.), 31 Am. B. R. 550.

Liquidated damages. Actual damage must be shown.

Northwest Fixture Co. v. Kilbourne and Clark (C. C. A. 9th Cir.), 11 Am. B. R. 725; 128 Fed. 256; 62 C. C. A. 638.

Liquidated damages in lease for residue of rent after bankruptcy of tenant.

Merwin v. Willoughby Co., 30 Am. B. R. 485; 206 Fed. 116.

Slocum v. Soliday, 25 Am. B. R. 460; 183 Fed. 410; 106 C. C. A. 56.

Wagering contracts. Contract for future delivery.

In re Aetna Cotton Mills Co., 22 Am. B. R. 629; 171 Fed. 994.

In re Dorr (C. C. A. 9th Cir.), 26 Am. B. R. 408; 186 Fed. 276; 108 C. C. A. 322.

**Waiver of tort and proof as quasi-contract.**

In re Filer (D. C. N. Y.), 5 Am. B. R. 835; aff'g 5 Am. B. R. 582.

Burgoyne v. McKillip, 25 Am. B. R. 387; 182 Fed. 452; 104 C. C. A. 590.

Atherton v. Green, 24 Am. B. R. 650; 179 Fed. 806; 103 C. C. A. 298.

**Implied contract.**

Clarke v. Rogers (C. C. A. 1st Cir.), 26 Am. B. R. 413; 183 Fed. 518; 106 C. C. A. 64; aff'd, 228 U. S. 534; 57 L. Ed. 953.

Reynolds v. New York Trust Co. (C. C. A. 1st Cir.), 26 Am. B. R. 698; 188 Fed. 611; 110 C. C. A. 409.

Loans made in violation of a State statute not provable on theory of an implied contract for money had and received.

In re Montello Brick Works (D. C. Pa.), 20 Am. B. R. 855; 174 Fed. 498.

Contract for sale of liquor, construing State statute as to illegality.

In re Fenn (C. C. A. 2d Cir.), 24 Am. B. R. 130; 177 Fed. 334; 100 C. C. A. 644; rev'g s. c. 22 Am. B. R. 833; 172 Fed. 620.

A partner's contribution of capital not a provable debt against partnership estate.

In re W. J. Floyd and Co., 19 Am. B. R. 438; 156 Fed. 206.

Where an accounting is necessary between partners to allow solvent partner opportunity to file claim, it should be had in Bankruptcy Court under Sec. 63-a.

In re Hirth (D. C. Minn.), 26 Am. B. R. 666; 189 Fed. 926.

Advances by partner to firm provable.

In re Rice, 21 Am. B. R. 205, 211; 164 Fed. 514.

Only provable after all of firm's creditors are paid.

In re Effinger, 25 Am. B. R. 930; 184 Fed. 728.

In re Strawbridge, 25 Am. B. R. 355.

Alimony in arrears or to accrue not a provable debt.

Audubon et al. v. Shufeldt (U. S. Sup.), 5 Am. B. R. 829; 181 U. S. 575; 45 L. Ed. 1009.

In re Smith, 3 Am. B. R. 67.

See, In re Challoner (D. C. Ill.), 3 Am. B. R. 442; 98 Fed. 82.

**Gambling debts.**

Note given for gambling debt endorsed to claimant. Burden of proof that claimant was holder in due course.

In re William Hill and Sons, 26 Am. B. R. 133.

Corporate bonds issued to a promoter in violation of a statute. In re Wyoming Valley Ice Co., 21 Am. B. R. 1; 153 Fed. 787.

Where a corporation has purchased its own stock in violation of statute, claim for balance of purchase price disallowed.

In re Sapulpa Produce Co. (D. C. Okla.), 26 Am. B. R. 900.

In re Tichenor-Grand Co. (D. C. N. Y.), 29 Am. B. R. 409; 203 Fed. 720.

Outlawed debt.

In re Putnam (D. C. Cal.), 27 Am. B. R. 923; 193 Fed. 464.

In re Blankenship (D. C. Cal.), 33 Am. B. R. 756; 220 Fed. 395.

Scheduling of debt barred by the statute is sufficient so far as the bankrupt is concerned to take the debt out of the operation of the statute.

In re Currier, 27 Am. B. R. 597; 192 Fed. 695.

**Damages for breach of contract of employment.**

In re Silverman Bros., 4 Am. B. R. 83; 101 Fed. 219.

In re James Dunlap Carpet Co. (D. C. Pa.), 20 Am. B. R. 882; 163 Fed. 541.

In re Neff (C. C. A. 6th Cir.), 19 Am. B. R. 23; 157 Fed. 57; 84 C. C. A. 561; aff'g 19 Am. B. R. 911.

Contra In re Inman and Co. (D. C. Ga.), 22 Am. B. R. 524; 171 Fed. 185.

In re Sweetser, Pembroke and Co. (C. C. A. 2d Cir.), 15 Am. B. R. 650; 142 Fed. 131; 73 C. C. A. 349.

In re American Vacuum Cleaner Co. (D. C. N. J.), 26 Am. B. R. 621; 192 Fed. 939.

In re D. Levy and Sons Co. (D. C. Md.), 31 Am. B. R. 25; 208 Fed. 479.

In re Dr. Voorhees Awning Hood Co., 187 Fed. 611.

#### **Breach of executory contract.**

##### **Anticipatory breach of contract.**

In re Frank E. Scott Transfer Co. (C. C. A. 7th Cir.), 32 Am. B. R. 417; 216 Fed. 308; 132 C. C. A. 452; modified 36 Am. B. R. 679.

In re Pettingill Co. (D. C. Mass.), 14 Am. B. R. 728; 137 Fed. 143.

Claim for damages arising out of breach of written contract is provable under Sec. 63-a (4) of Act and measure of damages is the difference between contract price and the cost of production.

Pratt v. Auto Spring Repairer Co. (C. C. A. 1st Cir.), 28 Am. B. R. 483; 196 Fed. 495; 116 C. C. A. 261.

In re Stern (C. C. A. 2d Cir.), 8 Am. B. R. 569; 116 Fed. 604; 54 C. C. A. 60.

Wood v. Fisk, 156 App. Div. (N. Y.) 497.

In re Duquesne Incandescent Light Co. (D. C. Pa.), 24 Am. B. R. 419; 176 Fed. 785.

In re Saxton Furnace Co. (D. C. Pa.), 15 Am. B. R. 445; 142 Fed. 293.

See, In re Imperial Brew Co., 16 Am. B. R. 110; 143 Fed. 579.

Contra In re Inman and Co. (D. C. Ga.), 23 Am. B. R. 566; 175 Fed. 312.

Surety's loss in completing bankrupt's contract provable though unliquidated.

Wood v. U. S. Fidelity and Guaranty Co., 16 Am. B. R. 21; 143 Fed. 424.

Payment must actually have been made by surety.

Williams and Co. v. U. S. Fidelity and Guaranty Co. (Ga. Ct. of App.), 23 Am. B. R. 802; See, S. C. (U. S. Sup.), 34 Am. B. R. 181.

##### **Surety on bankrupt's bond.**

In re Lyons Beet Sugar Refining Co., 27 Am. B. R. 610; 192 Fed. 445.

##### **Bail bond.**

In re Caponigri (D. C. N. Y.), 27 Am. B. R. 513; 193 Fed. 291.

The liability of the maker of a note to the surety thereon is a provable claim against the maker's estate in bankruptcy. Hayer v. Comstock, 7 Am. B. R. 493.

Endorser where liability is not absolute until after filing of petition.

Heyman v. Third National Bank of Jersey City, 32 Am. B. R. 716; 216 Fed. 685.

Bank of Wayne v. Gold (N. Y. Sup. Ct.), 26 Am. B. R. 722.

Amundson v. Folsom, 33 Am. B. R. 318; 219 Fed. 122; 135 C. C. A. 24.

Young v. Gordon and ano., 33 Am. B. R. 522; 219 Fed. 168; 135 C. C. A. 66.

In re Gerson, 5 Am. B. R. 89; 105 Fed. 891; aff'd, Moch v. Market Street National Bank, 6 Am. B. R. 11; 107 Fed. 897; 47 C. C. A. 49.

#### **Stipulation in note as to attorney's fees, when provable.**

In re T. H. Thompson Milling Co. (D. C. Tex.), 16 Am. B. R. 454; 144 Fed. 314.

In re Hersey (D. C. Ia.), 22 Am. B. R. 863; 171 Fed. 1004.

In re Edens & Co. (D. C. So. Car.), 18 Am. B. R. 643; 151 Fed. 940.

In re Keeton, Stell and Co. (D. C. Tex.), 11 Am. B. R. 367; 126 Fed. 426.

In re Jenkins, 27 Am. B. R. 860; 192 Fed. 1000.

Mechanic's Am. National Bank v. Coleman, 29 Am. B. R. 396; 204 Fed. 24; 122 C. C. A. 338.

Not provable in Pennsylvania.

McCabe v. Patton (C. C. A. 3d Cir.), 23 Am. B. R. 335; 174 Fed. 217; 98 C. C. A. 225.



**Stipulation in judgment.**

In re Hersherberger, 30 Am. B. R. 635; 208 Fed. 94.

**Stipulation in mortgage.**

British and American Mortgage Co. v. Stuart, 31 Am. B. R. 465; 210 Fed. 425; 127 C. C. A. 157.

**Provability of contingent claims.**

Claim of landlord for repairs under covenant in lease.

In re Schomacker Piano Mfg. Co., 20 Am. B. R. 899; 163 Fed. 413.

In re International Milling Co., 23 Am. B. R. 664; 175 Fed. 308.

Claim of landlord upon agreement of tenant to indemnify landlord for loss of rent following bankruptcy, not provable, since there was "no fixed liability, etc."

Slocum et al. v. Soliday (C. C. A. 1st Cir.), 25 Am. B. R. 460; 183 Fed. 410; 106 C. C. A. 56.

Right of lessor to retain security deposited within four months.

In re Sherwoods Inc. (C. C. A. 2d Cir.), 31 Am. B. R. 769; 210 Fed. 754; 127 C. C. A. 304.

**Rent to accrue not provable.**

In re Mahler, 5 Am. B. R. 453; 105 Fed. 428.

Watson v. Merrill (C. C. A. 8th Cir.), 14 Am. B. R. 453; 136 Fed. 359; 69 C. C. A. 185.

In re Hinckel Brewing Co. (D. C. N. Y.), 10 Am. B. R. 484; 123 Fed. 942. In re Roth and Appel (D. C. N. Y.), 22 Am. B. R. 504; 174 Fed. 64; aff'd, 24 Am. B. R. 588; 181 Fed. 667; 104 C. C. A. 649.

But see, In re Caloris Mfg. Co. (D. C. Pa.), 24 Am. B. R. 609; 179 Fed. 722.

Rent accruing after adjudication not provable, but contract to pay rent under the lease is not terminated.

Colman Co. v. Withoft (C. C. A. 9th Cir.), 28 Am. B. R. 328; 195 Fed. 250; 115 C. C. A. 222.

Dunlap v. Goodman Menger Lighting Co. (Pa. Com. Pl.), 31 Am. B. R. 504.

In re Cress McCormick Co., 25 Am. B. R. 464.

Shapiro v. Thompson (Ala. Sup. Ct.), 24 Am. B. R. 91.

But see, Martin v. Orgain (C. C. A. 5th Cir.), 23 Am. B. R. 454; 174 Fed. 772; 98 C. C. A. 246.

**Unliquidated claims. Sec. 63-b.**

What constitutes:

In re E. T. Kenney and Co., 14 Am. B. R. 611; 136 Fed. 451.

In re Duquesne Incandescent Light Co. (D. C. Pa.), 24 Am. B. R. 419; 176 Fed. 785.

Any doubt whether liquidated or unliquidated should be resolved in favor of its provability as a liquidated claim.

Dycus v. Brown, 135 Ky. 140; 121 S. W. 1010.

A claim for unliquidated damages for tort not connected with contract and not reduced to judgment is not susceptible of liquidation under this section. Brown and Adams v. United Button Co. (C. C. A. 3d Cir.), 17 Am. B. R. 565; 149 Fed. 48; 79 C. C. A. 70; aff'g In re United Button Co., 15 Am. B. R. 390; 140 Fed. 495.

In re Hawley (D. C. Wash.), 28 Am. B. R. 58; 194 Fed. 751.

For breach of warranty upon a sale.

In re Grant Shoe Co. (C. C. A. 2d Cir.), 12 Am. B. R. 349; 130 Fed. 881; 66 C. C. A. 78; aff'g 11 Am. B. R. 48; 125 Fed. 576.



FORM No. 160.

ORDER FOR LIQUIDATION OF CLAIM.

United States District Court,  
..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p>.....</p> <p style="text-align: right;"><i>Bankrupt.</i></p>	}	No.....
--	---	---------

..... having heretofore filed his claim herein against the above-named bankrupt and the damages being unliquidated and the said claimant having applied to liquidate such damages within the year since the adjudication herein, now on motion of ....., attorney for said claimant it is

Ordered, that the damages upon said claim be liquidated before the referee herein and a hearing had thereon on the ..... day of ....., 19...

Dated ....., 19...  
.....,  
*Referee in Bankruptcy.*

NOTES.

- Procedure upon liquidation. Sec. 63-b.**
- In re United Button Co. (*supra*).
  - In re Silverman Bros., 4 Am. B. R. 83; 101 Fed. 219.
  - In re Buchan's Soap Corp. (D. C. N. Y.), 22 Am. B. R. 382; 169 Fed. 1017.
  - In re Southern Steel Co. (D. C. Ala.), 25 Am. B. R. 358; 183 Fed. 498.
  - In re Duquesne Incandescent Light Co. (*supra*).
  - Liquidation in State court.
  - In re Heim Milk Product Co. (D. C. N. Y.), 25 Am. B. R. 746; 183 Fed. 787.
  - In re Martin (C. C. A. 2d Cir.), 35 Am. B. R. 776; 228 Fed. 184.

FORM No. 167.

**PETITION FOR PAYMENT OF PRIORITY CLAIMS AND SCHEDULE.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No.....
---	---	---------

To ....., Esq., Referee in Bankruptcy:

The petition of ..... respectfully shows and alleges:

1. That he is the trustee in bankruptcy herein duly qualified and acting; that annexed hereto is a schedule of claims entitled to priority (for ..... ) which have been filed and allowed herein. Petitioner believes that said claims are just and correct and should be paid at once for the following reasons:

.....

Wherefore petitioner prays that an order be entered authorizing and directing him as trustee to pay the net amount set opposite the name of each claimant, as a claim entitled to priority herein.

.....,  
*Petitioner.*

[Verification.]

SCHEDULE.

PRIORITY CLAIMS OF.....  
*Bankrupt.*

<i>Name of Creditor.</i>	<i>Amount of Claim.</i>	<i>Amount with Filing Fee.</i>
.....	.....	.....
<i>Totals.</i>	.....	.....

Dated ....., 19...

.....,  
*Trustee in Bankruptcy.*

NOTES.

**Claims entitled to priority of payment.**

Bankruptcy Act supersedes State insolvency laws and prescribes what debts shall have priority of payment.

*Smith v. Mottley* (C. C. A. 6th Cir.), 17 Am. B. R. 863; 150 Fed. 266; 80 C. C. A. 154; rev'g 16 Am. B. R. 226; 143 Fed. 407. *In re Slomka* (C. C. A. 2d Cir.), 9 Am. B. R. 635; 122 Fed. 630; 58 C. C. A. 322; rev'g 9 Am. B. R. 124; 117 Fed. 688.

Not enlarged by State statute.

*In re Crown Point Brush Co.* (D. C. N. Y.), 29 Am. B. R. 638; 200 Fed. 882.

Surety upon debt due United States and general wage claims.

*Guarantee Title and Trust Co. v. Title Guaranty and Surety Co.* (U. S. Sup.), 27 Am. B. R. 873; 224 U. S. 152; 56 L. Ed. 706; rev'g s. c. 23 Am. B. R. 340; 174 Fed. 385; 98 C. C. A. 603; and aff'g *In re Pittsburgh Industrial Iron Works* (D. C. Pa.), 22 Am. B. R. 851.

Claim for trust funds misappropriated, not specifically traced, subordinated to claims of general creditors.

*In re See* (C. C. A. 2d Cir.), 31 Am. B. R. 360; 209 Fed. 172; 126 C. C. A. 120.

**Priority attaches to character of claim, not to claimant.**

*In re Harmon*, 11 Am. B. R. 64; 128 Fed. 170.

*Shropshire, Woodliff and Co. v. Bush*, 17 Am. B. R. 77; 204 U. S. 186; 51 L. Ed. 436; 26 Sup. Ct. 178.

Priority of surety company which has paid wages of workmen under its bond.

*In re Dutcher*, 32 Am. B. R. 545; 213 Fed. 908.

Assigned checks received in payment of wages held entitled to priority.

*In re Stultz Bros.* (D. C. N. Y.), 34 Am. B. R. 783; 226 Fed. 989.

Sufficiency of statement to entitle to allowance as a priority claim.

*In re Dunn* (D. C. N. Y.), 25 Am. B. R. 103; 181 Fed. 701.

"Wage earners" as defined by Sec. 1 (27) of Act not controlling in determining what claims are entitled to priority.

*In re Scanlon* (D. C. Ky.), 3 Am. B. R. 202; 97 Fed. 26.

*In re Rouse, Hazard and Co.*, 1 Am. B. R. 234; 91 Fed. 96; 33 C. C. A. 356.

*Blessing v. Blanchard* (C. C. A. 9th Cir.), 35 Am. B. R. 135; 223 Fed. 35; 138 C. C. A. 399.

*Contra.* *In re August Becker and Co.* (Ref. N. Y.), 31 Am. B. R. 596.

*In re Hurley* (D. C. Minn.), 29 Am. B. R. 567; 204 Fed. 126.

**Wage earners.**

What constitutes "wages."

*Weaver v. Hugill Stone Supply Co.*, 16 Am. B. R. 516.

*Spruks v. Lackawanna Dairy Co.*, 26 Am. B. R. 554; 189 Fed. 287.

"Piece workers" entitled to priority as wage earners.

*In re Gurewitz* (C. C. A. 2d Cir.), 10 Am. B. R. 350; 121 Fed. 982; 58 C. C. A. 320.

*In re Thomas Deutschle and Co.* (D. C. Pa.), 25 Am. B. R. 343; 182 Fed. 430.

Commissions paid to a traveling salesman for his services are "wages" within the Act, as amended.

*In re New England Thread Co. (In re Dexter)* (C. C. A. 1st Cir.), 20 Am. B. R. 47; 158 Fed. 788; 89 C. C. A. 285; aff'g 18 Am. B. R. 840; 154 Fed. 742.

*In re National Marble and Granite Co.*, 31 Am. B. R. 80; 206 Fed. 185.

*In re Fink* (D. C. Pa.), 20 Am. B. R. 897; 163 Fed. 135.

Burden on claimant to prove by fair preponderance of evidence the contract of employment and performance of services.

*Mason v. St. Albans Furniture Co.*, 17 Am. B. R. 868; 149 Fed. 898.

*In re B. H. Gladding Co.* (D. C. R. I.), 9 Am. B. R. 700; 120 Fed. 709.

Not entitled to priority out of proceeds of sale of property over those having valid fixed liens on such property at date of adjudication.

*In re Yoke Vitrified Brick Co.*, 25 Am. B. R. 18; 180 Fed. 235.

Wage claim and lien of chattel mortgage.

In re McDavid Lumber Co. (D. C. Fla.), 27 Am. B. R. 39; 190 Fed. 97; aff'd W. Hayward Export Co. v. Lee, 193 Fed. 647; 113 C. C. A. 515.

See, In re Coe-Powers and Co. (C. C. A. 6th Cir.), 6 Am. B. R. 1; 109 Fed. 550; 48 C. C. A. 538.

Section includes a bookkeeper.

In re Baumblatt (D. C. Pa.), 19 Am. B. R. 500; 156 Fed. 422.

And musicians employed at regular wages to play at a theatre, restaurant, etc.

In re Caldwell, 21 Am. B. R. 236; 164 Fed. 515.

Salesman.

In re Roebuck Weather Strip and Wire Screen Co. (D. C. N. Y.), 24 Am. B. R. 532; 180 Fed. 497.

Teamster entitled only to priority for his personal services, not for use of horse, etc.

In re Winton Lumber and Mfg. Co., 17 Am. B. R. 117.

Claim of infant for wages.

In re Huntenberg, 18 Am. B. R. 697; 153 Fed. 768.

Priority of wage claim over bankrupt's claim for homestead exemption.

In re Strickland (D. C. Ga.), 20 Am. B. R. 923; 167 Fed. 867.

Petition to review denial of priority claim.

In re A. O. Brown and Co., 22 Am. B. R. 496; 171 Fed. 281.

Application of payments during three months' period where bankrupt is also indebted to claimants for wages both within and beyond the three months' period.

In re Van Wert Machine Co. (D. C. Mass.), 26 Am. B. R. 597; 186 Fed. 607.

President of a corporation not a wage earner within Sec. 64-b.

Carpenter v. Cudd (C. C. A. 4th Cir.), 23 Am. B. R. 463; 174 Fed. 603.

Does not cover principals in disguise.

In re Metropolitan Jewelry Co. (D. C. N. Y.), 31 Am. B. R. 750; 216 Fed. 384, 385.

Dummy "officer," as employee.

In re Swain Co. (D. C. Cal.), 28 Am. B. R. 66; 194 Fed. 749.

In re H. O. Roberts Co. (D. C. Minn.), 27 Am. B. R. 437; 193 Fed. 294.

Editor of a newspaper not entitled to priority within the section.

In re Zoffi, 23 Am. B. R. 607.

Professional men held not included.

In re Gay and Sturgis (D. C. Mass.), 36 Am. B. R. 350.

Nor manager of a branch of a broker's office.

In re A. O. Brown and Co., 22 Am. B. R. 496; 171 Fed. 281.

In re Snow Wire Works, 34 Am. B. R. 152.

Actress, In re All Star Feature Corp., 36 Am. B. R. 655.

Manager of a branch store not entitled to priority because of the rendition of incidental services.

In re Greenberger, 30 Am. B. R. 117; 203 Fed. 583.

In re Continental Paint Co. (D. C. N. Y.), 34 Am. B. R. 282; 220 Fed. 189.

Blessing v. Blanchard, 35 Am. B. R. 135; 223 Fed. 35; 138 C. C. A. 399.

Judgment for damages for wrongful dismissal as a salesman not entitled to priority.

In re E. B. Lewis, 12 Am. B. R. 279.

Assignment of wage claim.

General Order XXI.

Does not lose priority by assignment before commencement of bankruptcy proceeding.

In re Fuller and Bennett (D. C. W. Va.), 18 Am. B. R. 443; 152 Fed. 538.

In re Bennett (C. C. A. 6th Cir.), 18 Am. B. R. 320; 153 Fed. 673; 82 C. C. A. 531.

Shropshire and Co. v. Bush (U. S. Sup.), 17 Am. B. R. 77; 204 U. S. 186; 51 L. Ed. 436.

*Contra.* In re St. Louis Ice Mfg. and Storage Co. (D. C. Mo.), 17 Am. B. R. 194; 147 Fed. 752.

In re Dutcher, 32 Am. B. R. 545; 213 Fed. 908.

But where one holding an assignment of wages exchanges it for bankrupt's note or other obligation there is a novation and priority is lost.

In re Fuller and Bennett (*supra*).

Nor by assignment after proof.

In re North Carolina Car Co., 11 Am. B. R. 488; 127 Fed. 178.

Priority not lost by assignment after filing petition.

In re Campbell, 4 Am. B. R. 535; 102 Fed. 686; dist'g In re Westlund, 3 Am. B. R. 646; 99 Fed. 399.

On subrogation of surety company to rights of wage earners, see United Surety Co. v. Iowa Mfg. Co. et al., 24 Am. B. R. 726; 179 Fed. 55; 102 C. C. A. 623.

#### Priority of taxes. 64-a.

Actual and necessary costs of administration have priority over taxes due State.

In re Halsey Electric Generator Co. (D. C. N. J.), 23 Am. B. R. 401; 175 Fed. 825; aff'd, State of New Jersey v. Lovell (C. C. A. 3d Cir.), 24 Am. B. R. 562; 179 Fed. 321; 102 C. C. A. 505; certiorari denied, 219 U. S. 587; 55 L. Ed. 347.

*Contra.* In re Weiss (D. C. N. Y.), 20 Am. B. R. 247; 159 Fed. 295.

In re Prince and Walter (D. C. Pa.), 12 Am. B. R. 675; 131 Fed. 546.

In re Oxley (D. C. Wash.), 30 Am. B. R. 406; 182 Fed. 1019.

Taxes accruing after filing of petition entitled to same priority.

Stanard v. Dayton, 33 Am. B. R. 682; 220 Fed. 441.

Entitled to priority regardless of hardship to general creditors.

In re Bushnell (D. C. Conn.), 33 Am. B. R. 47; 215 Fed. 651.

In re Weissman, 24 Am. B. R. 150; 178 Fed. 115.

#### Franchise taxes.

State of New Jersey v. Anderson (U. S. Sup.), 17 Am. B. R. 63; 203 U. S. 483; 51 L. Ed. 284; rev'g 14 Am. B. R. 604; 137 Fed. 858; 70 C. C. A. 388.

Right of State to collect from bankrupt estate though the real property has been relinquished to mortgagee.

Hecox v. County of Teller (C. C. A. 8th Cir.) (construing Colorado statute), 28 Am. B. R. 525; 198 Fed. 634; 117 C. C. A. 338.

Taxes assessed after sale of property by trustee not entitled to priority.

In re Crowell, 29 Am. B. R. 308; 199 Fed. 659.

Section is strictly construed and not extended to a creditor other than the State or municipality to which the tax is due and owing.

In re William A. Harris Steam Engine Co. (D. C. R. I.), 34 Am. B. R. 835.

Effect of assignment of lease.

In re Sherwood's, Inc. (C. C. A. 2d Cir.), 31 Am. B. R. 769, 772; 210 Fed. 754; 127 C. C. A. 304.

Taxes which trustee is required to pay under Sec. 64-a carry interest.

In re Kallak, 17 Am. B. R. 414; 141 Fed. 276.

And penalty.

In re Scheidt Bros., 23 Am. B. R. 778; 177 Fed. 599.

*Contra.* In re Fisher and Co. (D. C. N. J.), 17 Am. B. R. 404; 148 Fed. 907.

"Legally due and owing" on day assessed even though not payable until after adjudication. In re Sherwood's, Inc. (*supra*).



**What not a "Tax."**

A penalty for failure to make return of increase of capital stock.

Commonwealth of Pennsylvania v. York Silk Mfg. Co. (C. C. A. 3d Cir.), 27 Am. B. R. 525; 192 Fed. 81; 112 C. C. A. 613; aff'g, s. c. 26 Am. B. R. 650; 188 Fed. 735.

Bonus payable upon increase of capital stock. s. c. (*supra*.)

Liability of an employer of labor to contribute assessments under the "Workmen's Compensation Act" of Washington, not a "Tax" under Sec. 64-a.

In re Farrell, 32 Am. B. R. 212; 211 Fed. 212.

Unpaid water rents.

In re Hills and Hills (C. C. A. 2d Cir.), 34 Am. B. R. 43; 221 Fed. 260; 137 C. C. A. 150.

In re Park Brew Co., 35 Am. B. R. 652.

When may be disallowed upon ground of "No taxable property."

In re Otto Freund Arnold Yeast Co., 24 Am. B. R. 458; 178 Fed. 305.

**Priority by State statute.**—Landlord's lien. In accordance with local law of State.

In re Burns (D. C. Ga.), 23 Am. B. R. 640; 175 Fed. 633.

In re V. D. L. Co. (D. C. Ga.), 23 Am. B. R. 643; 175 Fed. 635.

In re Delancey Stables Co. (D. C. Pa.), 22 Am. B. R. 406; 170 Fed. 860.

In re West Side Paper Co. (C. C. A. 3d Cir.), 20 Am. B. R. 660; 162 Fed. 110; 89 C. C. A. 110.

In re Consumer's Coffee Co. (D. C. Pa.), 18 Am. B. R. 500; 151 Fed. 933.

Martin v. Orgain (C. C. A. 5th Cir.), 23 Am. B. R. 454; 174 Fed. 772; 98 C. C. A. 246.

In re Desmond and Co. (D. C. Ala.), 28 Am. B. R. 456 and foot note; 198 Fed. 581; aff'd, 204 Fed. 1006; 122 C. C. A. 663.

Central Trust Co. v. Lueders and Co. (C. C. A. 6th Cir.), 34 Am. B. R. 61; 221 Fed. 829; 137 C. C. A. 387.

In re Abrams, 29 Am. B. R. 590; 200 Fed. 1005.

Preservation of landlord's lien given by State statute and not void under Sec. 67-f of the Act even though enforced and attached by distress within four months.

Henderson v. Mayer, 28 Am. B. R. 387; 225 U. S. 631; 56 L. Ed. 1233; aff'g In re Burns (*supra*). In re Jones Bros. & Co. (C. C. A. 5th Cir.), 36 Am. B. R. 747.

In re Southern Hardware and Supply Co. (D. C. Ala.), 32 Am. B. R. 92; 210 Fed. 381.

Shapiro v. Thompson (Ala. Sup. Ct.), 24 Am. B. R. 91.

Distrain after bankruptcy; right denied.

In re Bishop (D. C. So. Car.), 18 Am. B. R. 635; 153 Fed. 304.

Under law of Louisiana.

In re Meyer and Bleuler, 28 Am. B. R. 17; 195 Fed. 653.

Of Illinois.

In re United Motor Chicago Co. (C. C. A. 7th Cir.), 33 Am. B. R. 694; 220 Fed. 772; 136 C. C. A. 378.

In re Chaudron and Peyton (D. C. Md.), 24 Am. B. R. 811; 180 Fed. 841.

Under laws of Pennsylvania.

In re Keith-Gara Co., 29 Am. B. R. 466; 203 Fed. 585; aff'd, sub nom. Ludlow, Trustee v. Pugh (C. C. A. 3d Cir.), 32 Am. B. R. 435; 213 Fed. 450; 130 C. C. A. 96.

In re Quality Shoe Shop, 34 Am. B. R. 196.

Upheld in other jurisdictions.

In re Federal Biscuit Co. (C. C. A. 2d Cir.), 33 Am. B. R. 273; 218 Fed. 753; 134 C. C. A. 431.

Agreement to pay taxes as part of the rent.

McCann v. Evans (C. C. A. 3d Cir.), 26 Am. B. R. 47; 185 Fed. 93; 107 C. C. A. 313.

Covenant to pay water rent.

In re Family Laundry Co., 27 Am. B. R. 517; 193 Fed. 297.

Priority for materials.

In re Bennett (C. C. A. 6th Cir.), 18 Am. B. R. 320; 153 Fed. 673; 82 C. C. 531;  
aff'g 18 Am. B. R. 847.

In re Jones, 18 Am. B. R. 206; 151 Fed. 108.

In re Rheinstrom and Sons Co., 207 Fed. 119.

Mechanic's liens.

In re Clark Coal and Coke Co., 23 Am. B. R. 273; 173 Fed. 658.

Convict labor.

In re Worcester Co., 4 Am. B. R. 496; 102 Fed. 808; 42 C. C. A. 637.

In re Mercer (C. C. A. 8th Cir.), 22 Am. B. R. 413; 171 Fed. 81; 96 C. C. A. 185;

aff'g In re Western Implement Co., 22 Am. B. R. 167; 166 Fed. 576.

As to community property, see

In re Chavez (New Mexico) (C. C. A. 8th Cir.), 17 Am. B. R. 641; 149 Fed. 73; 80  
C. C. A. 451.

**Costs in attachment suit.**— Entitled to priority of payment.

In re Goldberg Bros. (D. C. Me.), 16 Am. B. R. 521; 144 Fed. 566.

In re Allen, 3 Am. B. R. 38; 96 Fed. 512.

In re Amoris (C. C. A. 9th Cir.) (Cal. Stat.), 24 Am. B. R. 565; 178 Fed. 919;  
102 C. C. A. 297.

In re Moncrief Mfg. Co., 31 Am. B. R. 674.

*Contra.* In re Copper King, Lim. (D. C. Col.), 16 Am. B. R. 148; 143 Fed. 649.

In re Rood (D. C. Minn.), 34 Am. B. R. 273.

Provable as an unsecured claim only so far as necessarily incurred.

In re Thompson Mercantile Co. (D. C. Minn.), 11 Am. B. R. 579.

[See Notes on Forms Nos. 159, 160, 165.]

**FORM No. 168.****ORDER DIRECTING PAYMENT OF PRIORITY CLAIMS.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No. ....
---	---	----------

Upon reading and filing the petition of ..... Trustee herein duly verified praying for authority to pay the claims filed herein claiming priority under Section 64 of the Bankruptcy Act, for ..... (wages), and upon motion of ..... attorney for said Trustee, it is

Ordered, that the said Trustee be and he hereby is authorized and directed to pay the claims entitled to priority herein, duly filed and allowed in this proceeding, as set forth in the schedule annexed to said petition.

Dated ....., 19...

.....  
*Referee in Bankruptcy.*

**NOTES.****Claims entitled to priority for wages.**

Priority of claim for wages not lost by entry of judgment on claim before commencement of bankruptcy proceedings. In re Haskell (D. C. Mass.), 36 Am. B. R. 428.

**Priority of claim of landlord.**

Priority of claim of landlord under New Jersey statute. In re Spiess-Alper Co. (D. C. N. J.), 36 Am. B. R. 470.

**Claims entitled to priority for taxes.**

Award by New York State Industrial Commission against the bankrupt for personal injuries to an employee not entitled to priority under Sec. 64-b-5 nor under Sec. 64-a. In re Rockaway Soda Water Mfg. Co. (Ref. N. Y.), 36 Am. B. R. 640.

**FORM No. 169.****PETITION TO REVIEW ORDER EXPUNGING PROOF OF DEBT.**

United States District Court,  
 for the ..... District of ..... :  
 In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

To ....., Esq., Referee in Bankruptcy:

The petition of ..... respectfully shows: That your petitioner is a creditor of ....., the above named bankrupt, and that his claim in the sum of \$. .... was heretofore filed herein; that thereafter objections were filed by ..... and the same were duly heard by the Referee herein and testimony taken.

That on the ..... day of ....., 19.., an order, a copy of which is hereto annexed, was made and entered herein by which said claim was rejected, disallowed and expunged.

That such order was and is erroneous in that:

[Concise statement of error.]

Wherefore, your petitioner, feeling aggrieved because of such order, prays that the same may be reviewed as provided in the Bankruptcy Act of 1898, the amendments thereto, and General Order XXVII.

Dated ....., 19...

.....,  
*Petitioner.*

[Verification.]

**NOTES.****Review of order allowing or disallowing claim.**

Findings of fact of a referee not disturbed except upon convincing proof of error.

In re Hatem, 20 Am. B. R. 470; 161 Fed. 895.

In re Rider (D. C. N. Y.), 3 Am. B. R. 192; 96 Fed. 811.

In re Douglass and Sons Co. (D. C. Conn.), 8 Am. B. R. 113; 114 Fed. 772.

**FORM No. 170.**

**PETITION THAT ALL CLAIMS TO SECURITIES, ETC., BE FILED AND REFERRED.**

United States District Court,

for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER

OF

.....  
*Bankrupt.*

To the Honorable Judge of the District Court of the United States for the ..... District of .....:

The petition of ..... respectfully shows to this Court and alleges:

1. That heretofore and on ....., 19.., a petition praying that the above named ..... be adjudged an involuntary bankrupt was filed in the office of the Clerk of the District Court of the United States for the ..... District of .....

2. That thereupon, your petitioner was duly appointed temporary receiver of the goods, assets and effects of said bankrupt, and duly qualified as such by filing a bond, as required by this court, which was duly approved, and he thereupon entered upon the performance of his duties and has continued to perform the same.

3. That thereafter, such proceedings were duly had that an order of adjudication was made and entered herein on ....., 19.., and the proceedings herein were duly referred to ....., Esq., one of the referees in bankruptcy.

4. [That thereafter, such further proceedings were duly had before said ....., Esq., that your petitioner herein was duly appointed trustee in bankruptcy herein, and duly qualified as such by filing his bond with said referee, which was thereupon duly approved, and he thereupon entered upon the performance of his duties as such Trustee, and has continued to perform the same.]

5. That subsequent to ....., 19.., to-wit; on or about ....., 19.., your petitioner received certain stocks, bonds, securities and other assets from the firm of ..... and that since ....., 19.., your petitioner has likewise received from other sources various stocks, bonds, securities and other assets, against which claims are made.



6. That your petitioner believes that it will be inadvisable and improper to sell and distribute such stocks, bonds, securities and other assets so received by him since ....., 19.., until all rights in and to the same shall have been ascertained and determined.

7. Your petitioner therefore asks that the annexed order to show cause may be granted.

8. No previous application for the annexed order to show cause has been made to any Court or Judge, and the reason the same is now asked for is, that it is desired to have the Court determine this matter at the earliest possible date, and that this Court should determine the method of service hereof, and your petitioner suggests that service may be made by publication of the annexed order to show cause, for the following reasons:

(a) The bankrupt herein has creditors, as appears by his schedules herein, in excess of ..... in number.

(b) The said creditors are located in many other states of the United States, and service other than by publication is impracticable.

(c) Your petitioner also suggests that as a preliminary measure, this petition and the order to show cause be served on all known creditors.

Wherefore, your petitioner prays for an order to show cause:

1. Directing creditors of the above named bankrupt and all persons, firms and corporations, interested herein, to show cause before this Court why an order should be made herein directing said persons, firms and corporations to file their claims against said stocks, bonds, securities and other assets, or the proceeds thereof, received by the petitioner herein from the firm of....., or from any source, subsequent to ....., 19.., if any such claim they have, on or before a day to be fixed by this Court.

2. Directing that the said claims so made, if any, be referred to..... Esq., the referee herein, for hearing, testimony and report.

3. Directing that any and all creditors, persons, firms and corporations, claiming such stocks, bonds, securities and other assets, or the proceeds thereof, who shall not file claims as aforesaid, be forever barred from making or claiming any such title or ownership to the said stocks, bonds, securities and other assets, or the proceeds thereof, and why the petitioner herein should not have such other and further relief as to the Court may seem just and proper.

Dated ....., 19...

.....,

*Petitioner.*

Attorneys for Petitioner,  
No.....Street  
City of .....  
[Verification.]

**FORM No. 171.**

**ORDER TO SHOW CAUSE THEREON.**

In the District Court of the United States,  
 ..... District of .....  
 In Bankruptcy.

<p>IN THE MATTER                  OF                  ..... and .....                  individually and as co-partners doing                  business under the firm name and                  style of .....  <i>Alleged Bankrupts.</i></p>	} Order to show cause, No.....
---	--------------------------------

Upon reading the annexed petition of ....., receiver of the above-named alleged bankrupts, verified ....., 19..., and all the papers and proceedings had and taken herein, and on motion of....., attorneys for the petitioner, it is

Ordered, that all of the creditors of the above-named alleged bankrupts, and all other persons, firms and corporations either claiming specific stocks, bonds, securities, sums of money or other assets, or the proceeds thereof, or asserting any alleged preferential claim against the general assets of the estate herein, which are or may be in the possession, custody or control of the petitioner herein, are hereby required to show cause before me or any one of the Judges of this Court, at a stated term of said Court, to be held in room No. ...., at ..... building in the ....., City of ....., on ....., 19.., at .... o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an order should not be made and entered herein directing said creditors, persons, firms or corporations to file within such time as the Court may direct, verified statements of any and all claims which they or any of them may have against specific stocks, bonds, securities, sums of money or other assets, or the proceeds thereof, and of any and all preferential claims which they may have against the general assets of the estate herein, such claims to be filed with a Special Master to be appointed for such purpose, and why the claims so filed, if any, should not be referred to said Special Master for hearing testimony and report, and why in default of the filing and proving such claims at a time and place, and in a manner in which this Court may direct, said creditors, persons, firms or corporations, and any and all of them, should not be forever barred, foreclosed and enjoined from making and asserting any such claim or claims, and sufficient reason for appearing therefor, it is

Ordered, that service of this order, together with the petition upon which it is granted, be made upon each of the creditors or other persons interested herein, whether or not such persons have appeared herein by attorney, or have instituted reclamation or other proceedings against the receiver herein, by mailing a copy to each of them at their respective addresses, as the same may appear upon the books and records of the alleged bankrupts herein, and by publishing a copy of this order in The ..... once a week for two successive weeks, which shall be and hereby is declared to be sufficient service thereof.

In the event of the addresses and residences of any of the creditors of any of the alleged bankrupts herein, or of any of the persons, firms or corporations above mentioned are unknown to the receiver herein, and do not appear on the books or records of the alleged bankrupts, sufficient service of this order to show cause, together with the petition upon which it is granted, shall be made as to them, by mailing in the same manner and within the time above specified, to them a copy thereof to such address as the alleged bankrupts herein shall furnish to said receiver.

And it is further ordered, that the receiver herein may apply at the foot of this order for such other or further relief in the premises as may be necessary or proper.

Dated ....., 19...

.....,

*U. S. District Judge.*

**FORM No. 172.**

**"OMNIBUS" ORDER DIRECTING THAT CLAIMS TO SECURITIES, ETC.,  
BE FILED AND REFERRED.**

At a Stated Term of the District Court  
of the United States for the .....  
District of ..... held at the Court  
House in the City of ..... on the  
..... day of ....., 19...

Present:

Hon. ....,

*District Judge.*

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

An order having been granted herein on ....., 19..., requiring creditors of the above named bankrupt and all other persons, firms or corporations, claiming stocks, bonds, securities and other assets, or the proceeds thereof, in the possession, custody or control of the receiver (or trustee) herein, to show cause why they should not file their claims against the said stocks, bonds, securities and other assets, or the proceeds thereof, etc., and the same having duly come on for argument, now,

On reading and filing the said order to show cause, dated ....., 19..., the petition of ..... receiver (or trustee) herein verified ....., 19..., and all the papers and proceedings had and taken herein, and proof of due service thereof,

On motion of ..... attorney for the receiver (or trustee) herein, it is

Ordered, that all creditors of the above named bankrupt and all persons, firms or corporations claiming stocks, bonds, securities or any other assets, or the proceeds thereof, in the possession, custody or control of the receiver (or trustee) herein be and they hereby are directed to file their claims thereto, duly verified in the office of the clerk of this court, on or before the ..... day of ....., 19...; and it is further

Ordered, that any and all creditors or other claimants to the said stocks, bonds, securities and other assets, or the proceeds thereof, who shall not file



such claim to the said stocks, bonds, securities and other assets, or the proceeds thereof asserting their right, title or interest therein and thereto, on or before said ..... day of ....., 19..., be and they hereby are forever barred from making claim or asserting any right, title or interest, in or to the said stocks, bonds, securities and other assets, now in the possession, custody or control of the receiver (or trustee) herein, or the proceeds thereof; and it is further

Ordered, that the determination of all rights, titles and interests, if any, in and to any and all of the said stocks, bonds, securities and other assets, or the proceeds thereof, made as aforesaid, be and the same hereby is referred to ....., Esq., who is hereby appointed Special Master for that purpose, to hear and determine the rights of all such creditors and claimants, including the receiver (or trustee) in bankruptcy herein; and the said master is directed in all respects to adjust, determine and adjudicate the rights, titles, interests, equities, claims and liens therein and thereto, and report to this Court his determination thereon, and it is further

Ordered, that service of this order be made upon the creditors or other firms, persons or corporations interested herein, by mailing on or before .... .., a copy of this order to each of them at their respective addresses as the same may appear upon the schedules herein, and by publishing a copy of this order in The ....., prior to ....., which shall be and is hereby declared to be sufficient service thereof; and it is further

Ordered, that the receiver (or trustee) herein may apply for such other and further relief in the premises as may be necessary or proper.

.....,

*United States District Judge.*

#### NOTES.

Summary determination of claims to property held by receiver or trustee.

In re Epstein (C. C. A. 8th Cir.), 19 Am. B. R. 89; 156 Fed. 42; 84 C. C. A. 208.

In re Rochford (C. C. A. 8th Cir.), 10 Am. B. R. 608; 124 Fed. 182; 59 C. C. A. 388.

#### Validity of order.

Bankruptcy Court has power to limit the time for claimants to prove title to stocks, bonds, etc., to less than the year which the Act allows to creditors for filing claims.

In re T. A. McIntyre and Co. (C. C. A. 2d Cir.), 24 Am. B. R. 4 and foot note; 176 Fed. 552; 100 C. C. A. 140.

In re Lathrop, Haskins and Co. (C. C. A. 2d Cir.), 34 Am. B. R. 739; 223 Fed. 912; 139 C. C. A. 392.

Owners of converted stock by a bankrupt firm of brokers held entitled to similar stock in bankrupt's possession at time of bankruptcy as tenants in common as against general creditors.

In re A. O. Brown and Co. (D. C. N. Y.), 22 Am. B. R. 659; 171 Fed. 254.

Thomas v. Taggart (U. S. Sup.), 19 Am. B. R. 710; 209 U. S. 385; 52 L. Ed. 845; aff'g In re Jacob Berry and Co., 17 Am. B. R. 467; 149 Fed. 176; 79 C. C. A. 124.

In re A. O. Brown and Co. (Ex parte Scotten), 25 Am. B. R. 800; 183 Fed. 861.



In re T. A. McIntyre and Co. (C. C. A. 2d Cir.), 25 Am. B. R. 93; 181 Fed. 960; 104 C. C. A. 424.

Constructive identification of stock.

Gorman v. Littlefield (U. S. Sup.), 30 Am. B. R. 266; 229 U. S. 19; 57 L. Ed. 1047.

In re Hollins (C. C. A. 2d Cir.), 34 Am. B. R. 34; 219 Fed. 544; 135 C. C. A. 312; rev'd, *Duel v. Hollins* (U. S. Sup.), N. Y. Law Jour., June 20, 1916.

Motion for leave to file after expiration of time denied.

In re T. A. McIntyre and Co., 24 Am. B. R. 4; 176 Fed. 552; 100 C. C. A. 140.

Contribution among claimants.

In re T. A. McIntyre and Co. (Petition of Pippey) (C. C. A. 2d Cir.), 24 Am. B. R. 626; 181 Fed. 955; 104 C. C. A. 419.

## PART V.

### TRUSTEE IN BANKRUPTCY.

- FORM No. 173. Bond of Trustee.
174. Trustee's first Report.
175. Trustee's Report of exempted Property.
176. Exceptions to Trustee's Report on Exemptions.
177. Order allowing Exemptions after Trustee's Report.
178. Petition of Trustee to continue Business of Bankrupt.
179. Order authorizing Trustee to continue Business.
180. Petition to reject Assets as burdensome.
181. Order allowing Trustee to reject Assets.
182. Trustee's Bill of Sale.
183. Trustee's Deed of Real Property.
184. Trustee's Affidavit to correct Tax Assessment.
185. Order requiring Trustee to adopt or reject Lease.
186. Notice of Adoption of Lease by Trustee.
187. Petition by Trustee for Leave to sue.
188. Order authorizing Trustee to sue.
189. Order of Federal Court permitting Trustee to apply to intervene in State Court Action.
190. Affidavit of Trustee to intervene.
191. Order in State Court allowing Intervention.
192. Order authorizing Trustee to abandon legal Proceedings.
193. Order ratifying Acts of Trustee.
194. Petition for Removal of Trustee and Order to show Cause thereon.
195. Order for Removal of Trustee.
196. Resignation of Trustee.
197. Order for Choice of new Trustee.
198. Notice of Meeting to elect new Trustee.
199. Demand for Security for Costs from Trustee, Plaintiff.
200. Order requiring Trustee to furnish Security for Costs.
201. Order requiring Trustee to file final Account.
202. Trustee's Return of no Assets.
203. Trustee's Report, final Account and Oath to Same.
204. Exceptions to Trustee's Account.
205. Petition of Attorney for Trustee for an Allowance for Services and for a Certificate for additional Compensation. (Local Rule.)
206. Certificate of Referee on Application for additional Compensation. (Local Rule.)
207. Order allowing additional Compensation to Attorney for Trustee.
208. Trustee's final Report.
209. Order discharging Trustee.

FORM No. 173.

BOND OF TRUSTEE.

In the District Court of the United States,  
for the ..... District of .....

<p style="text-align: center;">IN THE MATTER OF</p> <p style="text-align: center;">..... <i>Bankrupt.</i></p>	}	In Bankruptcy No.....
---	---	-----------------------

Know all men by these presents:

That we, ..... of ..... City of .....,  
State of ....., as Principal, and the .....  
Company, of ....., a corporation duly organized under the  
laws of the State of ....., and having an office and usual  
place of business at No. .... Street, in the City of .....,  
as Surety, are held and firmly bound unto the United States of America in the  
sum of .....

.....  
dollars in lawful money of the United States, to be paid to the said United  
States, for which payment, well and truly to be made, the said .....  
binds himself, his heirs, executors and administrators, and the said Company  
binds itself its successors and assigns, jointly and severally, by these presents.  
Signed and sealed this ..... day of ....., A. D., 19...

The condition of this obligation is such, that whereas the above named  
.....  
was on the ..... day of ..... A. D. 19...,  
appointed trustee in the case pending in bankruptcy in said court, wherein  
..... the bankrupt, and he, the said .....,  
has accepted said trust with all the duties and obligations pertaining thereunto:

Now, therefore, if the said .....  
trustee, as aforesaid, shall obey such orders as said Court may make in relation  
to said trust, and shall faithfully and truly account for all moneys, assets and  
effects of the estate of said bankrupt which shall come into his hands and  
possession, and shall in all respects faithfully perform all his official duties as

said trustee, then this obligation to be void; otherwise, to remain in full force and virtue.

Sealed and delivered  
in the presence of

..... L. S.  
.....  
The ..... Co.  
By .....  
.....  
Attest: .....  
.....  
..... *Attorney-in-fact.*

[Acknowledgment by principal and surety.  
Justification by Surety Company.]

NOTES.

**Sec. 50-b, c, g, h, i, j, k, m.**

Bond must be furnished within ten days, or five days additional if permitted by the court.

Surety company sufficient.

In re Kalter, 2 Am. B. R. 590.

Presumption in State court that trustee duly qualified by filing bond.

Breckons v. Snyder, 15 Am. B. R. 112; 211 Pa. St. 176.

**What bond covers.**

In re Kajita, 13 Am. B. R. 19.

Unauthorized payments.

In re Hoyt and Mitchell, 11 Am. B. R. 784; 127 Fed. 968.

Action by trustee upon bond of a former defaulting trustee may be maintained in a District Court of the United States.

United States ex rel. Schauffler v. Union Surety and Guaranty Co. (D. C. N. Y.), 9 Am. B. R. 114; 118 Fed. 482.

Or in State court of general jurisdiction.

Alexander v. Union Surety and Guaranty Co., 11 Am. B. R. 32; 89 App. Div. (N. Y.) 3; 85 N. Y. Supp. 282.

Action upon bond brought in name of United States.

Alexander v. Union Surety and Guaranty Co. (*supra*).

And leave of court not necessary (s. c.) Defaulting trustee proper, but not necessary party (s. c.).

Action on trustee's bond may be brought though no order was made directing absconding trustee to account.

Scofield v. United States ex rel. Bond (C. C. A. 6th Cir.), 23 Am. B. R. 259; 174 Fed. 1; 98 C. C. A. 39.

But, generally, an accounting is a necessary prerequisite.

United States v. Sondheim, 33 Am. B. R. 217.

FORM No. 174.

TRUSTEE'S FIRST REPORT.

United States District Court,  
for the ..... District of .....  
In Bankruptcy.

IN THE MATTER  
OF

No.....

.....  
*Bankrupt.*

To

....., Esq.,  
*Referee in Bankruptcy.*

I, ..... do hereby make and file my first report as trustee of the estate of the above named bankrupt:

1. On ....., 19.., I was appointed trustee of the estate of the above named bankrupt and required to file a bond in the penalty of \$..... I have duly qualified by filing a bond in the penalty required, and am now acting as such trustee.

2. That upon entering upon my duties, I prepared a complete inventory of all the property of the bankrupt estate consisting of .....  
.....,  
[Here enumerate property, location, encumbrances, etc., and proceedings taken in reference to same or to reduce to cash.]

3. That I have retained as my counsel, ....., Esq., and directed him to attend to the following matters: .....  
.....  
.....

4. That I desire instructions as to the following: .....  
.....  
.....

5. That I have on hand in cash ..... dollars, which is deposited in the ....., a designated depository of this court, and that said sum is sufficient for a first dividend of .....



per cent. upon the claims filed and allowed herein, for the declaration and payment of which, I do hereby apply.

Dated ..... , 19...

Respectfully submitted,  
.....  
*Trustee.*

[Verification, if desired, or required.]

NOTES.

Sec. 47-a (10).

FORM No. 175.

[Official.]

TRUSTEE'S REPORT OF EXEMPTED PROPERTY.

In the District Court of the United States for the ..... District  
of .....  
In Bankruptcy.

IN THE MATTER  
OF  
.....  
*Bankrupt.*

At ....., on the ..... day of ....., 19...  
The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid, as his own property, under the provisions of the Acts of Congress relating to bankruptcy.

General head.	Particular description.	Value.	
Military uniform, arms, and equipments .....		Dolls.	Cts.
Property exempted by state laws..			

.....  
*Trustee.*

NOTES.

Act, Secs. 2, (11), 6, 47, (11).

General Order XVII. See, notes under Form No. 112.

In re McClintock, 13 Am. B. R. 606.

In re Camp, 1 Am. B. R. 165; 91 Fed. 745.

In re Grimes, 2 Am. B. R. 730; 96 Fed. 529.

In re Friedrich (C. C. A. 7th Cir.), 3 Am. B. R. 801; 100 Fed. 284; 40 C. C. A. 378.

Burke v. Guarantee Title & Trust Co. (C. C. A. 3rd Cir.), 14 Am. B. R. 31; 134 Fed. 562; 67 C. C. A. 486.

In re Manning (D. C. Pa.), 7 Am. B. R. 571; 112 Fed. 948.

In re Finklestein (D. C. Pa.), 27 Am. B. R. 229.

Trustee may refuse to set apart.

In re Ellis, 10 Am. B. R. 754.

Duty of trustee upon setting apart property as exempt to surrender possession of same to bankrupt.

In re Soper, 22 Am. B. R. 868.

Trustee's action thereon not final.

In re White, 4 Am. B. R. 613; 103 Fed. 774.

FORM No. 176.

EXCEPTIONS TO TRUSTEE'S REPORT SETTING OFF EXEMPTIONS.

In the District Court of the United States for the ..... District  
of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

Bankrupt.

Now comes ..... of ..... a creditor of the  
above named bankrupt, and excepts to the trustee's report setting off said  
bankrupt's exemptions, filed herein on the ..... day of .....  
19.., in that such report sets off to said bankrupt the following:.....

.....  
.....  
for the following reasons: .....  
.....  
.....

and prays that a hearing may be had upon such exceptions and that the same may be argued, as provided in General Order XVII.

Dated ..... , 19...  
.....  
*Excepting Creditor.*

NOTES.

- Gen. Order XVII.
- Exceptions to trustee's report on exemptions.
- In re Cotton & Preston, 23 Am. B. R. 586.
- No trial by jury thereof allowed under Sec. 19 of Act.
- In re Thedford (D. C. Tex.), 27 Am. B. R. 354.
- Time for filing exceptions mandatory under General Order XVII.
- In re Krecun (C. C. A. 7th Cir.), 36 Am. B. R. 172.
- When exceptions to report filed too late.
- In re Amos, 19 Am. B. R. 804.

FORM No. 177.

ORDER ALLOWING EXEMPTIONS AFTER TRUSTEE'S REPORT.

United States District Court,  
..... District of ..... :  
In Bankruptcy.

IN THE MATTER	}	No.....
OF		
..... <i>Bankrupt.</i>		

The trustee herein having, more than twenty days since, filed his report of exempted property, in accordance with General Order XVII, and no exceptions having been taken thereto, [or; and exceptions thereto having been filed by...  
..... and the same having been argued before me] now, on motion of  
..... Esq., attorney for said bankrupt, it is  
Ordered, that said trustee's report of exempted property be, and the same hereby is, in all things confirmed, and the bankrupt's claim to exemptions is hereby determined accordingly;  
That the property specified in such report be delivered to said bankrupt forthwith.

Dated ..... , 19...  
.....  
*Referee in Bankruptcy.*

FORM No. 178.

PETITION BY TRUSTEE TO CONTINUE BUSINESS OF BANKRUPT.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

To ....., Esq.,  
Referee in Bankruptcy.

The petition of ....., respectfully alleges and shows:

1. That on or about the ..... day of ....., 19..., he was duly appointed trustee in bankruptcy of ....., the bankrupt above named, and required to file a bond in the penalty of \$..... That your petitioner duly qualified as such trustee by filing a bond in the penalty required; that he has continued to act and is now acting as such trustee.

2. That said ....., was engaged in.....  
.....  
and his place of business was at .....  
That situated on these premises is a complete outfit for the manufacture of ....., consisting of machinery of various kinds and materials to be used for manufacture. (That pursuant to the authority conferred by an order of this court, your petitioner, heretofore as temporary receiver, carried on the business of the bankrupt). That at the time of the appointment of your petitioner as trustee herein, the business of the bankrupt was being conducted in the usual manner, and your petitioner believes that it is for the best interests of the estate that the business be further continued under his direction as trustee.

3. That the bankrupt has offered terms of composition to his creditors and is now engaged in endeavoring to perfect said composition. That your petitioner verily believes that the business of the bankrupt will be greatly injured if the said business were closed at this time, and your petitioner further believes that it would be for the best interests of the bankrupt and the creditors that he be allowed to continue the business in the ordinary way for a period of ..... days.

Wherefore, your petitioner would respectfully pray that an order be made herein, authorizing and empowering your petitioner to carry on the business of the bankrupt, in his discretion, for a period of ..... days from the date of the said order.

.....,  
*Petitioner.*

[Verification.]

**FORM No. 179.**

**ORDER AUTHORIZING TRUSTEE TO CONTINUE BUSINESS.**

United States District Court,  
for the ..... District of ..... :  
In Bankruptcy.

IN THE MATTER OF ..... <i>Bankrupt.</i>	} No.....

On reading and filing the annexed petition of ....., the trustee of the estate of the above named bankrupt, verified ....., 19..., and it appearing to be for the best interests of this estate and there being no opposition thereto, and on motion of ....., attorney for the said trustee, it is

Ordered, that ....., the said trustee, be and he is hereby authorized, in his discretion, to continue and conduct the business of the said bankrupt, for a period of ..... days from the date of this order.

Dated ....., 19...

.....,  
*Referee in Bankruptcy.*

**NOTE.**

Act, Sec. 2 (5).

As to liability of trustee for injuries to property of another while conducting bankrupt's business without an order of the court.

McCauley v. Jackson (N. Y. App. Div.), 34 Am. B. R. 371; 165 App. Div. (N. Y.) 846; 151 N. Y. Supp. 120.



**FORM No. 180.**

**PETITION TO REJECT ASSETS AS BURDENSOME.**

United States District Court,  
for the ..... District of .....  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER OF</p> <p style="text-align: center;">..... <i>Bankrupt.</i></p>	}	No.....
---	---	---------

To  
....., Esq.,  
*Referee in Bankruptcy.*

Your petitioner respectfully shows:

That he is the trustee herein duly qualified and acting.

That a portion of such bankrupt's estate consists of the following property:

.....  
.....

That your petitioner has investigated the value of such property and finds the same to be worthless, for the following reasons: .....

.....

That it will be for the benefit of said estate that your petitioner be instructed to reject such property and to refuse to take the same into his possession.

That no previous application has been made for the order hereinafter asked.

Wherefore, your petitioner prays for an order permitting him to disclaim title to such property and to reject same as worthless and burdensome.

.....  
*Petitioner.*

(Verification.)

**FORM No. 181.****ORDER ALLOWING TRUSTEE TO REJECT ASSETS AS BURDENSOME.**

United States District Court,

.....District of .....

In Bankruptcy.

IN THE MATTER

OF

No.....

.....  
*Bankrupt.*

The trustee herein having made application for an order permitting him to reject as worthless and burdensome certain property, and to refuse to take the same into his possession, and it appearing that such order should be granted; and no one appearing in opposition thereto,

Now, on motion of ....., Esq., attorney for said trustee, it is

Ordered, that ....., the trustee herein, be, and he hereby is, authorized and directed to reject the following described property, and to refuse to take the same into his possession, viz.: .....

Dated ....., 19...

.....  
*Referee in Bankruptcy.*

**NOTES.****Burdensome property.**

Trustee not bound to take property which may involve him in litigation.

*Oldmixon v. Severance*, 18 Am. B. R. 823; 117 App. Div. (N. Y.) 921.

*In re Cogley*, 5 Am. B. R. 731; 107 Fed. 73.

*In re Scheerman*, 2 N. B. N. Rep. 118.

May abandon claim where result is doubtful.

*In re Harper* (D. C. N. Y.), 23 Am. B. R. 918; 175 Fed. 412.

Property mortgaged beyond value.

*Equitable Loan & Security Co. v. Moss & Co.* (C. C. A. 5th Cir.), 11 Am. B. R. 111; 125 Fed. 609; 60 C. C. A. 345.

*In re Zehner*, 27 Am. B. R. 536; 193 Fed. 787.

*In re Jersey Island Packing Co.* (C. C. A. 9th Cir.), 14 Am. B. R. 689; 138 Fed. 625; 71 C. C. A. 75.

What not an abandonment.

*In re Wiseman and Wallace*, 20 Am. B. R. 293.

Has no application to concealed property.

First Nat. Bank v. Lasater (U. S. Sup.), 13 Am. B. R. 698; 196 U. S. 115; 49 L. Ed. 408.

Effect of order is to revest title in bankrupt.

Sessions v. Romadka, 145 U. S. 29; 36 L. Ed. 609.

# FORM No. 182.

## TRUSTEE'S BILL OF SALE.

Know all men by these presents:

That I, ....., as trustee in bankruptcy of ....., party of the first part, for and in consideration of the sum of ..... dollars lawful money of the United States, to me in hand paid, at or before the ensealing and delivery of these presents by ....., of the City of ....., party of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey, unto the said party of the second part, his executors, administrators and assigns, all my right, title and interest in and to all the personal property, consisting of .....  
.....  
.....  
of ....., bankrupt, situated at ....., County of ..... as contained in Schedule "A" hereto annexed, (subject to all existing liens and encumbrances thereon.)

To have and to hold the same unto the said party of the second part, his executors, administrators and assigns forever.

In witness whereof, I have hereunto set my hand and seal the ..... day of ....., in the year one thousand nine hundred and ..... Signed, Sealed and Delivered

in the Presence of :

.....

.....  
*As trustee in bankruptcy*  
*of .....*

Schedule "A" of foregoing Bill of Sale:

.....  
.....  
.....

[Acknowledgment.]

**FORM No. 183.****TRUSTEE'S DEED.**

Know all men by these presents:

This Indenture, made this ..... day of ....., in the year one thousand nine hundred and ....., between ....., as trustee in bankruptcy of the estate of ....., a bankrupt, of the City of ....., County of ....., and State of ....., party of the first part, and ....., of the same place, party of the second part, Witnesseth:

That whereas, a petition in involuntary bankruptcy was filed in the District Court of the United States for the ..... District of ....., on the ..... day of ....., 19.., against ....., and

Whereas, the said ....., was duly adjudicated a bankrupt on said petition on the ..... day of ....., 19..., and the said ....., thereafter was duly appointed trustee of the estate of the said bankrupt on the ..... day of ....., 19..., and thereafter duly qualified, and has continued to act and is now acting as such trustee; and

Whereas, the said ....., as trustee in bankruptcy of the estate of ....., bankrupt, was duly authorized (after notice to the mortgage bondholders, lienors and creditors,) by an order of ....., Esq., Referee in Bankruptcy, dated ....., 19..., to sell and convey the property hereinafter mentioned (at public auction, free and clear of liens except taxes,) and the said sale having been duly held, at ....., ....., on the ..... day of ....., 19..., (and the said sale having thereafter been confirmed by an order of ....., Esq., Referee in Bankruptcy, dated the ..... day of ....., 19...)

Now, therefore, know ye, that I, the said ....., as trustee in bankruptcy of ....., bankrupt, by virtue of the power and authority in me vested, as aforesaid, and in consideration of the sum of ..... (\$.....), to me in hand paid by the said ....., party of the second part, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said ....., his heirs and assigns forever, All those certain tracts or parcels of land, with the buildings thereon standing, situated in the town of ....., county of ....., State of ....., and bounded and described as follows, to wit: [or, all my right, title and interest in and to the following described property:]

[Insert description.]

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, *to have and to hold* the said above granted premises with the appurtenances

thereof, unto the said party of the second part, his heirs and assigns forever, to his or their own proper use and behoof as fully and absolutely as the said party of the first part can and ought to do pursuant to the Statute and his authority as aforesaid,

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Signed, sealed and delivered  
in the presence of:

.....,  
*As Trustee in Bankruptcy, etc.*

[Acknowledgment.]

FORM No. 184.

**TRUSTEE'S AFFIDAVIT TO CORRECT ASSESSMENT FOR PERSONAL TAXES AGAINST ESTATE.**

<p>IN THE MATTER OF the Assessment of ..... for Personal Taxes by the City of.....</p>
--

State of ..... }  
County of ..... } ss.:

....., being duly sworn, deposes and says:

1. That he is the trustee in bankruptcy of ....., (a corporation organized and existing under and by virtue of the laws of the State of .....). That on or about the ..... day of ....., 19..., the said (corporation of) ..... was duly adjudged a bankrupt in the District Court of the United States for the ..... District of ....., and thereafter ceased to carry on business.

2. That deponent duly qualified as trustee herein on the ..... day of ....., 19...

3. That on the ..... day of ....., 19..., [the tax date] the said (corporation of) ..... was insolvent and the amount of his (its) liabilities greatly exceeded his (its) assets, and had no taxable property. That in view of the above facts, deponent would respectfully pray that the assessment of the above named (corporation of) ..... for personal



taxes for the year 19.., of \$. . . . ., be vacated and cancelled upon the tax books or assessment rolls.

Sworn to before me this ..... }  
 day of ..... 19... }

### FORM No. 185.

#### ORDER REQUIRING TRUSTEE TO ADOPT OR REJECT LEASE.

At a Stated Term of the United States  
 District Court, held in and for the.....  
 District of ....., at the Court  
 House in the City of ....., on the  
 ..... day of ....., 19....

Present:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

.....  
*Bankrupt.*

On reading and filing the notice of motion herein, and the petition of ....  
 ..... thereto annexed verified ....., the lease thereto  
 annexed and therein referred to, and after hearing ..... counsel for  
 petitioner in support of said motion and ..... counsel for  
 trustee in opposition thereto, it is

Ordered, that the trustee herein be and he is hereby, ordered and directed  
 to serve upon the attorney for the petitioner herein, a duly acknowledged  
 acceptance or rejection of said lease on or before ....., and it is

Further ordered, that such acceptance or rejection be without prejudice to  
 the rights of the petitioner against the trustee either individually or as such  
 officer of the estate herein, and without prejudice to the defenses or claims  
 in opposition thereto of such trustee.

Dated ....., 19...

.....,  
*U. S. D. J.*

FORM No. 186.

NOTICE OF ADOPTION OF LEASE BY TRUSTEE.

United States District Court,  
 ..... District of ..... :  
 In Bankruptcy.

IN THE MATTER  OF  .....  <i>Bankrupt.</i>	}	No. ....
--	---	----------

To ..... :

You will please take notice that the undersigned trustee in bankruptcy of the above named bankrupt, does hereby elect to adopt the lease of premises No. .... Street, City of ....., and formerly occupied by the bankrupt herein, said lease bearing date the ..... day of ....., 19..., between ....., as lessor, party of the first part, and ....., as lessee, party of the second part, for the period terminating on the ..... day of ....., 19..., the date of the expiration of said lease, at the rentals reserved in said lease.

Dated ....., 19...

.....  
*Trustee in Bankruptcy of*

NOTES.

A trustee liable upon *quantum meruit* for use and occupation of premises leased by the bankrupt.

In re Grignard Lithographic Co. (D. C. N. Y.), 19 Am. B. R. 101; 155 Fed. 699.

Trustee not bound to assume.

In re Sterne & Levi (D. C. Tex.), 26 Am. B. R. 535.

In re Scruggs, 31 Am. B. R. 94; 205 Fed. 673.

Assumption or rejection of lease.

Watson v. Merrill (C. C. A. 8th Cir.), 14 Am. B. R. 453; 136 Fed. 359; 69 C. C. A.

185.

In re Frazin & Oppenheim (C. C. A. 2nd Cir.), 24 Am. B. R. 903; 183 Fed. 28;

105 C. C. A. 320; rev'g 23 Am. B. R. 289; 174 Fed. 713.

In re Rubel (D. C. Wis.), 21 Am. B. R. 566; 166 Fed. 131.

Shapiro v. Thompson (Ala. Sup. Ct.), 24 Am. B. R. 91.

Assumption of contract by trustee.

Atchison, T. and S. F. R. R. Co. v. Hurley (C. C. A. 8th Cir.), 18 Am. B. R. 396; 153 Fed. 403; 82 C. C. A. 453; aff'd (U. S. Sup.), 213 U. S. 126; 53 L. Ed. 729.

## FORM No. 187.

**PETITION FOR LEAVE BY TRUSTEE TO SUE.**

United States District Court,  
for the ..... District of .....  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER OF</p> <p>.....</p> <p style="text-align: right;"><i>Bankrupt.</i></p>	}	No.....
---	---	---------

To the United States District Court,  
for the ..... District of .....  
The petition of ....., respectfully shows:

1. That your petitioner is the trustee in bankruptcy herein, duly qualified and acting.

2. That among the assets coming into the hands of your petitioner as trustee was a certain contract dated ....., 19.., with ..... That, as your petitioner is informed and verily believes, at the time of the adjudication herein, the bankrupt had entered upon the performance of said contract and completed the same.

3. That the said ..... has been examined under Section 21a, in this proceeding, but denies that there is any sum of money coming to the bankrupt herein, on account of said contract.

4. That the creditors herein have requested your petitioner, as trustee, to bring an action against ..... for the recovery of the moneys claimed to be due this estate by reason of said contract, and your petitioner has been advised by his counsel, ....., that he has a good and valid cause of action against .....

5. That no previous application has been made for the order prayed for herein.

Wherefore, your petitioner prays for an order authorizing and permitting him to bring an action in the ..... Court for the County of....  
....., against .....

.....,  
*Petitioner.*

[Verification.]

## FORM No. 188.

## ORDER AUTHORIZING TRUSTEE TO SUE.

At a Stated Term of the United States  
District Court for the ..... Dis-  
trict of ....., held at the  
United States Court House, City of ....  
..... on the ..... day of .....,  
....., 19...

Present:

Hon. ....,

*District Judge.*

IN THE MATTER

OF

No. ....

*Bankrupt.*

Upon reading and filing the annexed petition of .....,  
trustee herein, duly verified, and upon motion of .....,  
attorney for said trustee, it is

Ordered, that ....., as trustee in bankruptcy of the above  
named bankrupt, be and he hereby is authorized and permitted to bring an  
action as such trustee in bankruptcy, in the ..... Court of .....,  
..... County, against ....., upon the following  
alleged cause of action: .....

to recover any moneys which may be due this estate from .....  
.....

*D. J.*

## NOTES.

See, Secs. 23-a, b, 47-a (2) as amended 1910.

Suits by trustee.

May maintain suit in State court without first obtaining an order to do so from  
court of his appointment.

Traders Ins. Co. v. Mann, 11 Am. B. R. 269; 118 Ga. 381.

Chism, Trustee v. Bank of Friars Point, 5 Am. B. R. 56; 27 So. 610.

In re McCallum, 7 Am. B. R. 596; 113 Fed. 393.

*Contra.* In re Mersman, 7 Am. B. R. 46.

In re Phelps, 3 Am. B. R. 396.

May maintain suit to set aside fraudulent transfer in district other than the one in which appointed.

Teague v. Anderson Hardware Co., 20 Am. B. R. 424; 161 Fed. 765.

Refusal to bring suit to set aside transfer. Rights and remedies of creditors.

Casey v. Baker et al., 32 Am. B. R. 311.

Limitations thereon.

Hull v. Burr (C. C. A. 5th Cir.), 18 Am. B. R. 541; 153 Fed. 945; 83 C. C. A. 61.

**Suits against trustee.**—Leave to sue trustee.

May be sued without first obtaining leave of court.

In re Smith, 9 Am. B. R. 603; 121 Fed. 1014.

When should not be granted.

In re Schermerhorn (C. C. A. 8th Cir.), 16 Am. B. R. 507; 145 Fed. 341; 76 C. C. A. 215.

Duty as to defending suits brought against bankrupt prior to adjudication.

In re Kearney Bros., 25 Am. B. R. 757; 184 Fed. 190.

### FORM No. 189.

#### ORDER OF FEDERAL COURT PERMITTING TRUSTEE TO INTERVENE IN STATE COURT ACTION.

At a Stated Term of the District Court  
of the United States, held in and for the  
..... District of .....,  
at the United States Court House in the  
City of ....., on the .....  
..... day of ....., 19...

Present:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

.....  
*Bankrupt.*

Upon reading and filing the petition of ....., Trustee in Bankruptcy herein, verified the ..... day of ....., 19..., and upon all the proceedings heretofore had herein, and sufficient reason appearing therefor, now upon motion of ....., attorney for the said Trustee, it is

Ordered, that ..... as Trustee in Bankruptcy of ....., the bankrupt herein, be and he hereby is authorized and permitted to inter-



vene as a party plaintiff (or defendant) in the action of .....  
 plaintiff, against ..... defendant, now pending in the .....  
 Court of .....

*D. J.*

**FORM No. 190.**

**AFFIDAVIT OF TRUSTEE TO INTERVENE.**

..... Court,  
 .....,

.....	}
<i>Plaintiff,</i>	
against	
.....	}
<i>Defendant.</i>	

State of ..... } ss.:  
 County of .....

....., being duly sworn, says:

1. That he is the trustee in bankruptcy of ..... the plaintiff herein.

2. That this action is for ....., and was commenced by the plaintiff on or about ....., 19...; that an answer has been filed herein by the defendant, and deponent is informed and verily believes that this action is on the calendar of this court undetermined.

3. That on the ..... day of ....., 19..., the plaintiff herein was duly adjudicated a voluntary bankrupt in the United States District Court for the ..... District of ....., and thereafter at a meeting of plaintiff's creditors duly called and held, deponent was appointed trustee in bankruptcy of said ..... and has duly qualified and filed his bond in the penalty required and is still acting as such trustee.

4. That all of plaintiff's rights in this action are now vested by law in deponent as his said trustee in bankruptcy.

5. That by an order dated ....., duly entered in the District Court of the United States for the ..... district of ..... deponent was permitted to apply to intervene as party plaintiff herein.

6. No previous application has been made for the order asked for herein.

Deponent, therefore, prays that he may intervene and be substituted as

party plaintiff in this action in the place of the said ..... , and that an order to that effect may be entered.

Sworn to before me this ..... }  
day of ..... , 19... }

**FORM No. 191.**

**ORDER ALLOWING TRUSTEE TO INTERVENE.**

At a Stated Term of the .....  
Court of ..... , held in and for the  
County of ..... , at the Court  
House, in the City of ..... , on  
the ..... day of ..... , 19...

Present:

Hon. .... ,  
*Justice.*

.....	}
<i>Plaintiff,</i>	
against	}
.....	
<i>Defendant.</i>	

Upon reading and filing the affidavit of ..... , verified ..... , 19... , and it appearing that the consent of the United States District Court for the ..... District of ..... has been duly obtained thereto, it is, on motion of ..... , Esq.,

Ordered, that ..... , as trustee in bankruptcy of ..... , he and he hereby is allowed to intervene herein and he hereby is substituted as party plaintiff in this action in the place and stead of the said ..... ,  
*J.*

**NOTES.**

Intervention by trustee.  
Griffin v. Mutual Life Ins. Co. of N. Y., 11 Am. B. R. 622; 119 Ga. 663.  
Ninth Nat. Bank v. Moses, 11 Am. B. R. 772; 39 Misc. (N. Y.) 664; 80 N. Y. Supp. 617.  
Blick v. Nimmo (Md. Ct. of App.), 30 Am. B. R. 770.  
May intervene in action to foreclose mortgage.  
In re Porter & Bros., 6 Am. B. R. 259; 109 Fed. 111.  
Kessler v. Herklotz (N. Y. App. Div.), 22 Am. B. R. 257; 132 App. Div. (N. Y.) 278.

Trustee cannot be substituted in libel suit brought by bankrupt prior to his adjudication.

Epstein v. Handverker, 26 Am. B. R. 712.

A trustee may take advantage of failure to file a chattel mortgage.

In re Metropolitan Store v. Saloon Fixture Co. (D. C. N. Y.), 15 Am. B. R. 119.

**Substitution as plaintiff.**

Consent of Federal court should be first obtained and affirmatively shown.

Hahlo et al. and Burrit as trustee v. Cole (N. Y. App. Div.), 15 Am. B. R. 591; 112 App. Div. (N. Y.) 636.

Patten v. Carley (N. Y. App. Div.), 8 Am. B. R. 482; 69 App. Div. (N. Y.) 423.

In re Howard, 12 Am. B. R. 462; 130 Fed. 1004.

Colgan v. Finck, 30 Am. B. R. 535; 159 App. Div. (N. Y.) 57.

Continuation of suit by trustee; liability for costs.

Malloch v. Adams, 28 Am. B. R. 916; 199 Fed. 542.

**FORM No. 192.**

**ORDER AUTHORIZING TRUSTEE TO ABANDON LEGAL PROCEEDINGS.**

United States District Court,

for the ..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

Upon all the papers and proceedings had in the above entitled matter, the petition of ....., trustee, verified the ..... day of ....., 19..., the notice to creditors, dated ....., 19..., and proof of due mailing of said notice; and a meeting of creditors having been duly held at the office of ....., referee herein, on the ..... day of ....., 19..., and said creditors having voted at said meeting that ....., as trustee be authorized to abandon all legal proceedings and litigation heretofore commenced by him, relative to the recovery of ..... from ..... and sufficient reason appearing therefor;

Now, upon motion of ....., attorney for the trustee, it is

Ordered, that ....., as trustee be and he hereby is authorized to abandon all legal proceedings seeking to recover .....

Dated ....., 19...

.....,  
*Referee in Bankruptcy.*

**FORM No. 193.**

**ORDER RATIFYING ACTS OF TRUSTEE.**

United States District Court,  
for the ..... District of .....  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER OF</p> <p>..... <i>Bankrupt.</i></p>	}	No.....
---	---	---------

A meeting of creditors having been held at the office of the referee on the  
....day of ....., 19.., and the trustee of the estate of the above  
named bankrupt having appeared at said meeting and stated to the said  
creditors that he had received as such trustee the sum of \$.....  
in full satisfaction of the claim of the bankrupt against .....  
of the City of ....., by reason of the following: .....  
.....  
.....  
and the said trustee having asked that his said acts be ratified by the creditors  
at said meeting, and the said creditors having voted to ratify his said  
acts, it is

Ordered, that the acts and proceedings hereinbefore stated to have been  
taken by the trustee herein, be and the same hereby are in all respects ratified  
and confirmed.

Dated, ....., 19...

.....  
*Referee in Bankruptcy.*

## FORM No. 194.

**PETITION FOR REMOVAL OF TRUSTEE AND ORDER TO SHOW CAUSE THEREON.**

United States District Court,  
 ..... District of .....  
 In Bankruptcy.

IN THE MATTER  
 OF

No.....

.....  
*Bankrupt.*

To the District Court of the United States,  
 ..... District of .....:

The petition of ....., a creditor of said bankrupt, whose claim has been filed and allowed herein, respectfully represents that it is for the interest of the estate of said bankrupt that ....., heretofore appointed trustee of said bankrupt's estate, should be removed from his trust, for the causes following, to wit: [Here set forth the particular cause or causes for which such removal is requested.]

Wherefore, ..... prays that notice be served upon said ....., trustee as aforesaid, to show cause, at such time as may be fixed by the court, why an order should not be made removing him from said trust.

.....  
*Petitioner.*

(Verification.)



ORDER TO SHOW CAUSE THEREON.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER  
OF  
.....  
*Bankrupt.*

} No.....

At ....., on the ..... day of ....., A. D. 19....  
To .....,  
Trustee of the estate of ....., bankrupt:  
You are hereby notified to appear before the Judge of this court, at the Court House, on the ..... day of ....., A. D. 19..., at ..... o'clock .... M., to show cause (if any you have) why you should not be removed from your trust as trustee as aforesaid, according to the prayer of the petition of ....., one of the creditors of said bankrupt, filed in this court on the ..... day of ....., A. D. 19..., in which it is alleged ..... (Here insert the allegation of the petition.)

.....,  
*Referee (or Clerk.)*

NOTES.

- Act. Sec. 2, (17).  
General Orders XIII., XVII.  
Trustee removable by the judge only.  
In re Bernec & Wolf, 185 Fed. 224.  
Application made in the first instance to the court upon notice to trustee. Judge may refer to the referee as such, or as special master.  
Joining with bankrupt in scheme to defraud by means of a composition, grounds for removal.  
In re Wrisley Co. (C. C. A. 7th Cir.), 13 Am. B. R. 193; 133 Fed. 388; 66 C. C. A. 450.  
Change of residence of trustee not in itself sufficient ground for removal.  
In re Seider (D. C. N. Y.), 20 Am. B. R. 708; 163 Fed. 139.  
Trustee, when removed for cause, denied personal expenses and commissions.  
In re Leverton, 19 Am. B. R. 434; 155 Fed. 931.  
When proof of claim has not been disallowed, trustee may not collaterally attack status of creditor upon petition for removal.  
In re Roanoke Furnace Co., 18 Am. B. R. 661; 152 Fed. 846.  
When trustee removed, appointment of a new trustee.  
Scofield v. United States ex rel. Bond (C. C. A. 6th Cir.), 23 Am. B. R. 259; 174 Fed. 1; 98 C. C. A. 39.

FORM No. 195.

ORDER FOR REMOVAL OF TRUSTEE.

United States District Court,  
for the ..... District of .....  
In Bankruptcy.

<p>IN THE MATTER OF  .....  <i>Bankrupt.</i></p>	}	No.....
--	---	---------

..... of ....., a creditor herein having on the ..... day of ....., A. D. 19.., presented his petition to this court, praying that for the reasons therein set forth, ....., the trustee of the estate of said ..... bankrupt, might be removed:

Now, therefore, upon reading the said petition of the said ..... and the evidence submitted therewith, and upon hearing counsel on behalf of said petitioner and counsel for the trustee, and upon the evidence submitted on behalf of said trustee, it is

Ordered, that the said ..... be removed from his trust as trustee of the estate of said bankrupt, and that the costs of the said petitioner incidental to said petition be paid by said ....., trustee (or, out of the estate of the said ....., subject to prior charges).

Witness the Honorable ....., Judge of the said court, and the seal thereof, at ....., in said district, on the ..... day of ....., A. D. 19...

.....  
D. J.

**FORM No. 196.****RESIGNATION OF TRUSTEE.**

United States District Court,  
 for the ..... District of .....:  
 In Bankruptcy.

IN THE MATTER

OF

.....  
*Bankrupt.*

To ....., Esq., Referee in Bankruptcy.  
 ..... Street,

City of .....

Dear Sir:

I hereby tender my resignation as trustee of the estate of .....  
 bankrupt, and request that same be accepted. I herewith file my report and  
 account as trustee.

Respectfully yours,

Dated ....., 19...

**NOTES.**

Compensation when trustee resigns to avoid *odium* of removal.

In re E. J. Fidler & Son, 23 Am. B. R. 16; 172 Fed. 632.

Effect of on pending suit and proper method of procedure by supplemental bill.  
 Hull v. Burr (Fla. Sup. Ct.), 28 Am. B. R. 837.

**FORM No. 197.**

[Official.]

**ORDER FOR CHOICE OF NEW TRUSTEE.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No. ....
---	---	----------

At ....., on the ..... day of ....., A. D. 19...

Whereas by reason of the removal (or the death or resignation) of .....  
....., heretofore appointed trustee of the estate of said bank-  
rupt, a vacancy exists in the office of said trustee, it is

Ordered, that a meeting of the creditors of said bankrupt be held at .....,  
in ....., in said district, on the ..... day of .....,  
A. D. 19..., for the choice of a new trustee of said estate.

And it is further ordered that notice be given to said creditors of the time,  
place and purpose of said meeting, by letter to each, to be deposited in the  
mail at least ten days before that day.

.....,

*Referee in Bankruptcy.*

NOTES.

Vacancy in office of Trustee.

Sec. 44.

General Order XXV.

Creditors must be given opportunity to elect.

In re Hare, 9 Am. B. R. 520; 119 Fed. 246.

On re-opened estate.

Appointment may not be collaterally attacked.

Fowler v. Jenks, 11 Am. B. R. 255.

Referee cannot appoint unless creditors have failed to do so.

In re Newton (C. C. A. 8th Cir.), 6 Am. B. R. 52; 107 Fed. 429; 46 C. C. A. 399.

**FORM No. 198.****NOTICE OF MEETING TO ELECT NEW TRUSTEE.**

United States District Court,

..... District of .....

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

To the creditors of the above named bankrupt:

A vacancy in the office of the Trustee herein having been caused by the death of the former Trustee ....., notice is hereby given that a special meeting of creditors will be held at the office of ....., Referee in Bankruptcy, ..... Street, ....., on the ..... of ....., 19..., at ..... o'clock in the ..... noon, at which time the creditors may attend, appoint a new Trustee and transact such other business as may properly come before the said meeting.

.....  
*Referee in Bankruptcy.*

..... Street,

.....



**FORM No. 199.**

**DEMAND FOR SECURITY FOR COSTS FROM TRUSTEE, PLAINTIFF.**

..... Court,  
County of .....

....., as Trustee	}
in Bankruptcy of.....,	
<i>Plaintiff,</i>	
against	
.....and	
.....,	}
<i>Defendants.</i>	

Sir:

Please take notice that the plaintiff herein is hereby required forthwith to give security for costs in accordance with the rules and practice of this court on the ground that when this action was commenced, the plaintiff was the, "official assignee or official trustee of a debtor, or an assignee in bankruptcy," in an action brought upon a cause of action claimed by him to have arisen, "before the assignment, the appointment of the trustee, or the adjudication in bankruptcy."

Dated, ....., ....., 19...

.....  
*Attorney for Defendant,*  
Office and P. O. Address,  
..... Street,  
City of .....

To ..... Esq.,  
*Attorney for Plaintiff,*  
..... Street,  
City of .....

**FORM No. 200.**

**ORDER REQUIRING TRUSTEE TO FURNISH SECURITY FOR COSTS.**

At a Special Term of the .....  
Court (Part ..) of .... held in the.....  
Court House in the City of .....  
on the ..... day of ....., 19...

Present:

Hon. ....,  
Justice.

.....as Trustee	}
in Bankruptcy of.....,	
Plaintiff,	
against	
.....	}
Defendant.	

On reading and filing the affidavit of ..... duly verified, and the annexed demand, with proof of due service, and on motion of ....., attorney for the defendant herein, and it appearing that this action is brought upon a cause of action arising before the appointment of the trustee and the adjudication in bankruptcy herein, it is

Ordered, that the plaintiff within ..... days after service of a copy of this order upon his attorney, pay into court the sum of \$250 to be applied to the payment of costs, if any, awarded against him, or in lieu thereof, file with the clerk of this court, an undertaking executed to the defendant by one sufficient surety that such surety will pay to the defendant, upon demand, all costs which may be awarded to him in this action, not to exceed the sum of two hundred and fifty dollars, (\$250), and also within said ..... days to serve upon the attorney for the defendant, a written notice of such payment or of the filing of such undertaking, and it is

Further ordered, that all proceedings on the part of the plaintiff herein, except to review or vacate this order, are hereby stayed until the payment of said sum or the filing of such undertaking and notice thereof, and the allowance of such undertaking, and it is

Further ordered, that the time of the defendant to answer, demur, or otherwise move with reference to the complaint herein, be extended until (.....) days after compliance with the terms of this order.

Dated, ....., 19...

.....

J.

NOTES.

**Security for costs** (N. Y. Practice).

Code of Civil Procedure, Sec. 3268 (4).

In a suit upon a cause of action which arose prior to adjudication trustee must furnish security for costs upon demand.

Joseph v. Raff, 9 Am. B. R. 227; 75 App. Div. (N. Y.) 447; mod'g Joseph v. Markley, 8 Am. B. R. 18; 73 App. Div. (N. Y.) 156.

Jordan v. Bridges, 12 Am. B. R. 626; 113 Fed. 107.

Cole v. Manson, 42 Misc. (N. Y.) 149; 85 N. Y. Supp. 1011.

When a trustee sues to set aside an alleged fraudulent conveyance by the bankrupt, the cause of action is not one, "Arising before the assignment, the appointment of the trustee or the adjudication in bankruptcy" as specified in Code Civ. Pro. sec. 3268 (4).

Riker v. Gwynne (N. Y. Sup.), 21 Am. B. R. 95; 129 App. Div. (N. Y.) 112.

Non-resident trustee may be required to furnish under rule of court.

Osborne v. Pennsylvania R. Co., 20 Am. B. R. 277.

"A trustee in bankruptcy suing to set aside fraudulent conveyances made by the bankrupt will be required to give security for costs pursuant to section 3268 of the Code of Civil Procedure, where it appears that more than six months before the adjudication in bankruptcy the creditors in whose behalf the trustee sues had obtained judgment against the bankrupt and the execution thereon had been returned unsatisfied so that a creditor's suit could have been maintained by them."

Kiendl as Trustee, etc. v. Dubroff and others (App. Div. 2nd Dept.), 136 App. Div. (N. Y.) 8; citing Kronfeld v. Liebman, 78 App. Div. (N. Y.) 437.

Adsit v. Butler, 87 N. Y. 585.

Prentiss v. Bowden, 145 N. Y. 342.

See also:

Rielly v. Rosenberg, 57 App. Div. (N. Y.) 408.

Schreier v. Hogan, 70 App. Div. (N. Y.) 2; 74 N. Y. Supp. 1051.

Thomas v. Roddy, 19 Am. B. R. 873; 122 App. Div. (N. Y.) 851.

**FORM No. 201.**

**ORDER DIRECTING TRUSTEE TO FILE FINAL ACCOUNT.**

United States District Court,

..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

..... a creditor of the above named bankrupt whose claim has been filed and allowed herein, having made application to this Court for

an order requiring ....., Esq., the trustee in bankruptcy herein, to file his final account and it appearing that one year has expired since the adjudication herein and no valid reason having been offered why this estate should not be closed, now upon reading and filing the petition of ..... verified the ..... day of ....., 19..., it is

Ordered, that ..... trustee of the above named bankrupt file his final account as such trustee in the office of the referee herein on or before the ..... day of ....., 19...

Dated ....., 19...

.....,  
*Referee in Bankruptcy.*

### FORM No. 202.

[Official.]

#### TRUSTEE'S RETURN OF NO ASSETS.

United States District Court,

for the ..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

At ....., in said district, on the ..... day of ....., A. D. 19...

On the day aforesaid, comes ....., of ....., in the County of ..... and State of ....., and makes oath and says that he, as trustee of the estate and effects of the above named bankrupt, has neither received nor paid any moneys on account of the estate.

.....,  
*Trustee.*

Subscribed and sworn to before me, }  
at ....., this ..... day of }  
..... A. D. 19... }

#### NOTES.

In some jurisdictions referees require as an additional clause, ["and no assets are discoverable."]

FORM No. 203.

TRUSTEE'S REPORT, FINAL ACCOUNT AND OATH TO SAME.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No.....
---	---	---------

To ..... Esq., Referee in Bankruptcy:

I, ....., do hereby make and file my final report as trustee of the estate of the above named bankrupt:

1. At the first meeting of creditors of the above named bankrupt, held at the office of the referee on ....., 19.., I was appointed trustee of the estate of the bankrupt and duly qualified.

2. That I retained as my attorney ..... Esq., of .....

3. That on the ..... day of ....., 19... I filed my first report herein and thereafter a first dividend of ..... % was declared and paid to all creditors herein, whose claims had been duly filed and allowed.

4. That all of the property belonging to this estate has now been reduced to cash and the administration thereof practically completed.

5. That the following matters have received my attention since the date of my first report: .....

.....

.....

6. My final account is hereto annexed and with vouchers in support thereof. By this account it appears that I have received \$...... and have expended \$......, leaving a balance in my hands for distribution amounting to \$......

7. I state my lawful commissions as trustee at \$......

All of which is respectfully submitted.

Dated ....., 19...

.....,  
*Trustee.*



United States District Court,  
for the ..... District of .....;  
In Bankruptcy.

IN THE MATTER	}	No.....
OF		
..... <i>Bankrupt.</i>		

Final Account of .....,  
*Trustee.*

19..	I charge myself as follows:	
.. . .	.....,	\$.....
.. . .	.....,	.....
.. . .	.....,	.....
.. . .	.....,	.....

Total \$.....

19..	I credit myself as follows:	
.. . .	.....,	\$.....
.. . .	.....,	.....
.. . .	.....,	.....

Total \$.....

SUMMARY.

Total Receipts,	\$.....
Total Disbursements,	.....

Balance in hands of trustee,	\$.....
Dated ....., 19...	

.....  
*Trustee.*

**OATH TO FINAL ACCOUNT.**

[*Official.*]

In the District Court of the United States for the ..... District  
of .....  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No. ....
---	---	----------

On this ..... day of ....., A. D. 19..., before me comes ....., of ....., in the county of ..... and State of ....., and makes oath, and says that he was, on the ..... day of ....., A. D. 19... appointed trustee of the estate and effects of the above-named bankrupt, and that as such trustee he has conducted the settlement of the said estate. That the account hereto annexed containing ..... sheets of paper, the first sheet whereof is marked with the letter ..... is true, and such account contains entries of every sum of money received by said trustee on account of the estate and effects of the above-named bankrupt, and that the payments purporting in such account to have been made by said trustee have been so made by him. And he asks to be allowed for said payments and for commissions and expenses as charged in said accounts.

.....,  
*Trustee.*

Subscribed and sworn to before me at ....., in said ..... district of ....., this ..... day of ....., A. D. 19..

NOTES.

**General Order XVII.**

**Final account. Act. Sec. 2, (8), 47, (7), (8), 48-a, e, 49, 58, 65.**

Any time subsequent to four months after adjudication.

In re Eldred, 19 Am. B. R. 52; 155 Fed. 686.

In re Bell Piano Co. (D. C. N. Y.), 18 Am. B. R. 183; 155 Fed. 272.

In re Stein, 1 Am. B. R. 662; 94 Fed. 124.

Filing may be compelled.

O'Connor v. Sunseri (C. C. A. 3rd Cir.), 26 Am. B. R. 1; 184 Fed. 712; 107 C. C. A.

72.

When petition to review should be dismissed.

In re Scherr, 14 Am. B. R. 794; 138 Fed. 695.

**Objections to trustee's account.**

Trustee bound to use due diligence in collecting assets of estate and may be charged with value of assets lost by failure to use such diligence.

In re Cadenas and Coe, 24 Am. B. R. 135; 178 Fed. 158.

In re Reinboth (C. C. A. 2nd Cir.), 19 Am. B. R. 15; 157 Fed. 672; 85 C. C. A. 340.

See, In re Bayley, 22 Am. B. R. 249; 177 Fed. 522.

In re Olmsted (D. C. Haw.), 32 Am. B. R. 344.

In re Carothers & Co., 27 Am. B. R. 921; 193 Fed. 687.

In re Eden Musee American Co. (D. C. N. Y.), 36 Am. B. R. 111.

Not liable as trustee for injuries to property of another, while conducting bankrupt's business without an order authorizing continuance of business.

McCauley v. Jackson (N. Y. App. Div.), 34 Am. B. R. 371; 165 App. Div. (N. Y.) 846; 151 N. Y. Supp. 120.

Surcharged for mismanagement or dishonesty.

In re Monsarrat (D. C. Haw.), 25 Am. B. R. 820.

Payment of unauthorized allowances by referee to himself.

In re Borger (Dist. of Col. Sup. Ct.), 35 Am. B. R. 233.

An order sustaining objections to a trustee's account and charging trustee with losses reviewable only upon petition for review under section 24-b.

In re Moore & Bridgeman (C. C. A. 5th Cir.), 21 Am. B. R. 651; 166 Fed. 689; 92 C. C. A. 285.

Exceptant must move promptly in obtaining a review or he will be deemed to have acquiesced.

In re Scherr, 14 Am. B. R. 794; 138 Fed. 695.

**Act. Sec. 58-a (6).**

**Accounts of trustee.**—Examination of by referee.

In re Baginsky, Michel & Co., 2 Am. B. R. 243.

In re Fullick, 28 Am. B. R. 634; 201 Fed. 463.

In re Byerly, 12 Am. B. R. 186; 128 Fed. 637.

Must be complete before settlement allowed.

In re Carr, 8 Am. B. R. 635; 116 Fed. 556.

In re Hoyt, 9 Am. B. R. 574; 119 Fed. 987.

Deficiency incurred in conducting business of bankrupt allowed as a preferred claim.

In re Prince & Walter, 12 Am. B. R. 675; 131 Fed. 546.

**FORM No. 204.**

**EXCEPTIONS TO TRUSTEE'S ACCOUNT.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No.....
---	---	---------

....., a creditor and person interested in the above entitled estate appearing by ....., his attorney, hereby excepts to the trustee's account filed herein in the following particulars:

I. He excepts to the following items of expenditure as unnecessary, unwarranted and unlawful, viz.: .....  
.....  
.....  
and asks that the said trustee be surcharged therewith.

II. He excepts to said account on the ground that the trustee has failed to account for the following assets belonging to this estate:.....  
.....  
.....

III. He excepts to said account on the ground that the said trustee has wasted and negligently lost the following assets belonging to this estate:.....  
.....

IV. (Set forth specifically any other objections.)

Wherefore, ..... respectfully asks that the said account be not allowed; that the trustee be not discharged until he has accounted for the matters above set forth.

Dated ....., 19...

.....  
*Creditor.*

[Verification.]

NOTES.

Compensation of trustee. Secs. 48-(a), (b), (c), (e), 72.

Cross-references, Secs. 2, (5), 51, (2).

General Order XXXV., (3). See, Rule XXII, So. Dist. of N. Y. and 8 of Instructions to Referees.

Commissions on "All monies disbursed," or turned over to any person, including lien holders.

Basis for determination.

In re J. M. Fiske & Co. (D. C. N. Y.), 31 Am. B. R. 736; 209 Fed. 982.

In re Smith (C. C. A. 6th Cir.), 29 Am. B. R. 628; 203 Fed. 369; 121 C. C. A.

485.

Application determined by law as it stood at time of appointment.

In re Screws, 17 Am. B. R. 269; 147 Fed. 989.

In encumbered property.

In re Sanford Furniture Mfg Co., 11 Am. B. R. 414; 126 Fed. 888.

In re Muhlhauser Co., 9 Am. B. R. 80.

In re Cramond (D. C. N. Y.), 17 Am. B. R. 22; 145 Fed. 966.

In re Hicks (Ref. Tex.), 27 Am. B. R. 168.

In re Baughman (D. C. So. Car.), 20 Am. B. R. 811; 163 Fed. 669.

Denied in pledged stock in hands of pledgee.

In re Meadows (D. C. N. Y.), 29 Am. B. R. 165; 199 Fed. 304.

When no surplus.

Smith v. Township of Au Gres (C. C. A. 6th Cir.), 17 Am. B. R. 745; 150 Fed. 257;

80 C. C. A. 145.

In re Bourlier Cornice and Roofing Co., 13 Am. B. R. 585; 133 Fed. 958.

Commissions on exempt property.

In re Castleberry (D. C. Ga.), 16 Am. B. R. 430; 143 Fed. 1018.

Trustee removed for misconduct denied compensation.

In re Leverton (D. C. Pa.), 19 Am. B. R. 434; 155 Fed. 931.

Contract for extra compensation made with creditor void as against public policy.

Devries v. Orem (Ct. of App. Md.), 17 Am. B. R. 876; 65 Atl. 430.

American Surety Co. v. Freed (C. C. A. 3rd Cir.), 35 Am. B. R. 103; 224 Fed. 333.

None on secured creditor's claim.

In re Anders Push Button Telephone Co. (D. C. N. Y.), 13 Am. B. R. 643; 136 Fed. 995.

A trustee who is an attorney at law not allowed additional compensation for legal services performed by himself.

In re Van Denburg (D. C. O.), 34 Am. B. R. 521; 221 Fed. 475.

When entitled to full commissions.

In re Morse Iron Works and Dry Dock Co. (D. C. N. Y.), 18 Am. B. R. 846; 154 Fed. 214.



FORM No. 205.

**PETITION OF ATTORNEY FOR TRUSTEE FOR AN ALLOWANCE FOR SERVICES AND FOR A CERTIFICATE FOR ADDITIONAL COMPENSATION. (LOCAL RULE.)**

District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No.....
---	---	---------

To the District Court of the United States,  
for the ..... District of .....:  
The petition of ..... respectfully shows and alleges:

1. That he is the attorney for the trustee herein.
2. That on the ..... day of ....., 19.., ..... was duly appointed trustee in bankruptcy herein and duly qualified. That thereafter and on or about the ..... day of ..... your petitioner was duly retained by the said trustee to act as his attorney in the administration of the estate and has since continued to act in such capacity.
3. That your petitioner has rendered a large amount of services to this estate which are enumerated as follows:  
[Set forth explicitly and in detail showing amount of time involved.]
4. That the trustee's final account herein shows that he has received a total of \$..... and has disbursed the sum of \$....., leaving a balance in his hands for distribution of \$.....
5. That petitioner has received no compensation for his services rendered to this estate as above set forth and has incurred necessary disbursements and expenses of \$....., a schedule of which is hereto annexed.
6. Petitioner respectfully submits that his services in view of the amount of time and work involved and results attained entitle him to a greater amount of compensation than the referee is empowered to grant under the rule of this court.

Wherefore, petitioner prays for such allowance for his services as to the court may seem just and proper, that his disbursements be allowed and that

the referee herein grant him a certificate for additional compensation as provided by Rule ..... of this district.

.....,

*Petitioner.*

[Verification.]

\_\_\_\_\_

**FORM No. 206.**

**CERTIFICATE OF REFEREE FOR ADDITIONAL COMPENSATION TO  
ATTORNEY FOR TRUSTEE (SOUTHERN DISTRICT OF NEW YORK).**

United States District Court,  
..... District of .....:  
In Bankruptcy.

IN THE MATTER	}
OF	
..... <i>Bankrupt.</i>	

To the Honorable Judges of the United States District Court,  
for the Southern District of New York:

I, ....., referee in bankruptcy, in charge of this case do hereby certify as follows:

That the bankrupt herein was a corporation organized and existing under the laws of the State of ....., and having its principal place of business at No. .... street, in the Borough of ....., city of ....., where it was engaged in the manufacture and sale of.....  
..... That said company was duly adjudicated a bankrupt on the ..... day of ....., 19.., and on the ..... day of ....., 19.., at the first meeting of creditors held before me, ....., was elected trustee and duly qualified. That on the ..... day of ....., 19.., the said trustee filed his final account with the vouchers in support thereof and on said day, ....., attorney for said trustee filed with me an application for allowance for his services as such attorney and praying for additional compensation. Due notice was given to all of the creditors herein of a meeting to consider such application and pass on the trustee's account. That such meeting was duly held at my office on

....., 19.., and no objections were made or filed to such account.

The trustee in his final account charges himself with having received a total of \$...... and credits himself with having disbursed the sum of \$......, leaving in his hands a balance of \$......

That the commissions of the trustee herein amount to the sum of \$......

That it appears by the petition of ....., the attorney for the trustee, that he has acted continuously as such attorney, from ....., 19.., to date, a period of more than ..... years, and has brought a suit against ..... and others, to recover assets in large amount alleged to have been diverted from said corporation prior to the adjudication, and concealed. That such suit was instituted in the ..... Court of ..... and resulted in a substantial recovery for the estate. That the amount of time employed by counsel in the conduct of this suit may be summarized as follows:

.....  
.....

That this involved the preparation of the bill in equity, taking out of commissions to take testimony in various states, preliminary motions and the actual trial of the case on the ..... day of ....., resulting in a decree in favor of the trustee upon which the estate realized the sum of \$...... That it also appears by the petition of said attorney for the trustee that he conducted a lengthy examination of the officers of the bankrupt and other witnesses at the first meeting of creditors and adjournments thereof before the referee and also special examinations under orders obtained upon application under section 21-a, involving ..... days of attendance before the referee.

It also appears that the said attorney collected the outstanding accounts entailing correspondence with debtors in various parts of the country; that he investigated a pending suit of the bankrupt against .....in ..... , and advised the trustee with reference to same.

He also brought proceedings on behalf of the trustee to re-examine ..... different claims filed in the referee's office, each of which was an independent proceeding, and are set forth in detail in the attorney's petition with the ultimate disposition of each proceeding. These re-examinations involved an unusual amount of time and work for the trustee's attorney and were of substantial benefit in reducing the amount of claims presented against the estate.

He also prepared petition and order for sale of bankrupt's effects and bill of sale thereon, and the various reports and final account of the trustee. He also rendered the general and ordinary services of the attorney for the trustee. That in view of the facts presented and the amount of services rendered, I am of the opinion, that the sum of \$...... which is the maximum amount that may be allowed by the referee is inadequate compensation for the services rendered and that the attorney for the trustee herein,....., is entitled to receive for his services as such attorney a sum in excess thereof and

is granted permission to apply to the Court for such additional compensation as to the Court may seem proper.

That this certificate is made in pursuance of Rule 8 of instructions to referees in bankruptcy.

Dated ..... , 19...

Respectfully submitted,

..... ,

*Referee in Bankruptcy.*

**FORM No. 207.**

**ORDER ALLOWING ADDITIONAL COMPENSATION TO ATTORNEY FOR TRUSTEE.**

At a Stated Term of the United States District Court, for the ..... District of ..... , held at the United States Court House, ..... , City of ..... , on the ..... day of ..... , 19..

PRESENT:

Hon ..... ,

*District Judge.*

IN THE MATTER
OF
.....
<i>Bankrupt.</i>

} No.....

....., the attorney for the trustee herein, having presented his duly verified petition praying that he be allowed additional compensation for services rendered by him to the trustee in this proceeding, and a meeting of creditors having been duly held after due notice of the filing of said petition, and the referee having filed his certificate to the effect that in his opinion, said attorney is entitled to additional compensation, and a motion having been duly made by the said attorney for an order fixing and allowing same, now upon reading and filing the certificate of ..... , Esq., Referee, dated ..... , 19.., the petition of ..... , verified ..... , 19.., and upon all the proceedings had herein, and no

one appearing in opposition thereto, it is on motion of .....  
attorney for the trustee herein,

Ordered, that the said attorney for the trustee be and he hereby is allowed  
additional compensation and the trustee is hereby directed to pay to him out  
of the funds in his hands belonging to the estate, the sum of .....  
dollars in addition to amount heretofore allowed by the referee herein.

.....,  
*D. J.*

**FORM No. 208.**

**TRUSTEE'S FINAL REPORT.**

United States District Court,  
..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No.....
---	---	---------

To ....., Esq., Referee in Bankruptcy:

I, ....., trustee in bankruptcy of the above named bankrupt  
do hereby report that on the ..... day of ....., 19.., an order  
was duly made herein passing my accounts as trustee herein and directing me  
to make certain payments, and that pursuant to said order I have made the  
payments directed therein and file herewith the vouchers in support thereof.

I further report that there are now no assets in my hands as trustee and no  
other assets are discoverable.

Wherefore, I respectfully pray that an order be made herein discharging me  
of my trust and directing that my bond be cancelled.

Dated ....., 19...

.....  
*Trustee.*

[Verification.]



FORM No. 209.

ORDER DISCHARGING TRUSTEE.

United States District Court,  
..... District of .....:  
In Bankruptcy.

IN THE MATTER	}	No. ....
OF		
..... <i>Bankrupt.</i>		

An order having been heretofore made in this proceeding passing the account of ....., the trustee herein, and directing him to make certain payments, and the said trustee having filed in the office of the referee his final report, with the vouchers in support thereof, showing that the payments directed by said order have been duly made, and that he has no further assets in his hands and none is discoverable, it is

Ordered, that the said report be and the same hereby is allowed as filed, and the said trustee hereby discharged of his trust, and his bond as trustee directed to be cancelled.

Dated ....., 19...  
.....  
*Referee in Bankruptcy.*

NOTES.

Judge has power to vacate.  
Brown v. Persons, 10 Am. B. R. 416; 122 Fed. 212.

## PART VI.

### EXAMINATION OF WITNESSES AND DEPOSITIONS.

- FORM No. 210. Petition by Receiver for Examination under Sec. 21-a before Special Commissioner.
- 211. Order for Examination thereon.
  - 212. Order for Examination of Bankrupt.
  - 213. Petition by Trustee for Order of Examination of Witness and for Subpoena.
  - 214. Order for such Examination and that Subpoena issue.
  - 215. Petition that U. S. Marshal produce Prisoner for Examination.
  - 216. Order that Marshal produce Prisoner for Examination.
  - 217. Subpoena to appear before Special Commissioner.
  - 218. Subpoena Ticket.
  - 219. Summons to Witness to appear before Referee.
  - 220. Subpoena *Duces Tecum*.
  - 221. Return of Summons to Witness.
  - 222. Examination of Bankrupt or Witness.
  - 223. Petition that Witness sign Testimony before Referee.
  - 224. Order that Witness sign Testimony.
  - 225. Petition for Leave to obtain Ancillary Order of Examination.
  - 226. Order granting Leave to apply for Ancillary Order of Examination.
  - 227. Petition in Court of Ancillary Jurisdiction for Order of Examination.
  - 228. Order of Examination in Court of Ancillary Jurisdiction.
  - 229. Notice of taking Deposition (*De Bene Esse*).
  - 230. Deposition (*De Bene Esse*).
  - 231. Certificate of Commissioner or Notary Public thereon.

#### FORM No. 210.

#### PETITION BY RECEIVER FOR EXAMINATION UNDER SEC. 21-a BEFORE SPECIAL COMMISSIONER.

United States District Court,  
..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p>.....</p> <p style="text-align: right;"><i>Bankrupt.</i></p>	}	No. ....
--	---	----------

To the District Court of the United States,  
for the ..... District of .....:

The petition of ..... respectfully shows and alleges:

1. That on or about the ..... day of ....., 19.., a petition in involuntary bankruptcy was filed by certain creditors against the above named bankrupt and on said day your petitioner was duly appointed temporary receiver in bankruptcy and has duly qualified and is now acting as such receiver. (That an order of adjudication was entered herein on the ..... day of ....., 19..)

2. That the assets belonging to the estate consist of the following:

.....  
 .....  
 and your petitioner has had considerable difficulty in collecting and obtaining possession of same; and although he has endeavored to ascertain the exact condition of this property and other matters pertaining to the bankruptcy proceedings from the bankrupt, he has been unable either to get possession of the books, or to acquire sufficient information to enable him to proceed with the collection of the accounts and other matters pertaining to the administration of the estate.

3. That ..... of ..... and ..... of ..... were employees of (or had business relations with) the bankrupt and your petitioner believes have certain information of value to the administration of this estate.

4. That without an early examination of the designated persons, concerning the acts, conduct and property of the bankrupt whose estate is in process of administration, your petitioner fears he will have great difficulty in collecting the outstanding accounts, recovering property and otherwise properly administering the estate.

Wherefore, your petitioner prays for an order, under Section 21-a of the United States Bankruptcy Act, requiring ..... and ..... to appear before a special commissioner of this court and be examined concerning the acts, conduct and property of the bankrupt whose estate is in process of administration.

.....,

*Petitioner.*

[Verification.]

**FORM No. 211.**

**ORDER FOR EXAMINATION THEREON.**

At a Stated Term of the District Court  
of the United States for ..... District  
of ..... held at the United States  
Court House, City of ....., on  
the ..... day of ....., 19..

PRESENT:

Hon.....,  
*District Judge.*

IN THE MATTER  
OF

.....  
*Bankrupt.*

On reading and filing the petition of ....., temporary receiver herein, verified the ..... day of ....., 19.., the petition in bankruptcy and all the proceedings heretofore had herein and sufficient reason appearing to me therefor, on motion of ....., attorney for said receiver, it is

Ordered, that ....., of ....., appear before ....., Esq., who is hereby appointed Special Commissioner for that purpose, and be examined concerning the acts, conduct and the property of the said bankrupt, whose estate is in process of administration, and the clerk of this Court is hereby authorized to issue a subpoena to secure the attendance of such witness.

.....,  
*D. J.*

NOTES.

**Examination of witnesses. Sec. 21-a, 7 (9).**

**Cross References. Secs. 12, 20, 38 (2) (5) 39 (5) (9) 41-a (3) (4) 58-a (1).**

**General Orders IV, X, XII (1), XXII.**

**Authority for Examination under 21-a.**

When authorized before adjudication:

Estate in process of administration.

Cameron v. United States (U. S. Sup.), 31 Am. B. R. 604; 231 U. S. 710; 58 L. Ed. 448; rev'g on other grounds, s. c. 27 Am. B. R. 657; 192 Fed. 548; 113 C. C. A. 20.

In re Howard (D. C. Cal.), 2 Am. B. R. 582; 95 Fed. 415.

In re Fleischer (D. C. N. Y.), 18 Am. B. R. 194; 151 Fed. 81.

Rawlins & Rawlins v. Hall-Epps Clothing Co. (C. C. A. 5th Cir.), 33 Am. B. R. 237; 217 Fed. 884; 133 C. C. A. 594.

Within discretion of court.

In re Andrews, 12 Am. B. R. 267; 130 Fed. 383.

*Contra.* Skubinsky v. Brodek et al. (C. C. A. 3d Cir.), 22 Am. B. R. 689; 172 Fed. 332; 97 C. C. A. 116.

In re Crenshaw (D. C. Ala.), 19 Am. B. R. 266; 155 Fed. 271. In re Davidson (D. C. Mass.), 19 Am. B. R. 833; 158 Fed. 678.

Who may apply for examination.

The bankrupt, creditor or any officer may apply. "Officer" includes receiver.

In re Fixen, 2 Am. B. R. 822; 96 Fed. 748.

Even though creditor has not proved his claim.

In re Rose, 19 Am. B. R. 169; 163 Fed. 636.

In re Walker, 3 Am. B. R. 35; 96 Fed. 550.

In re Jehu, 2 Am. B. R. 498; 94 Fed. 638.

In re Samuelsohn, 23 Am. B. R. 528; 174 Fed. 911.

In re Kuffler, 18 Am. B. R. 587; 153 Fed. 667.

When application may be made to referee.

In re Abbey Press (C. C. A. 2nd Cir.), 13 Am. B. R. 11; 134 Fed. 51; 67 C. C. A. 161.

In application for order to examine the bankrupt or a third person not necessary to set forth the questions to be asked or particular facts or transactions to be investigated.

In re Bryant, 26 Am. B. R. 504; 188 Fed. 530.

In re Howard, 2 Am. B. R. 582; 95 Fed. 415.

**Who may be examined.**

**Any designated person; assignee or receiver under State law included.**

In re Pursell, 8 Am. B. R. 96; 114 Fed. 371.

People's Bank v. Brown (C. C. A. 3rd Cir.), 7 Am. B. R. 475; 112 Fed. 652; 50 C. C. A. 411.

Person liable to suit may be examined.

In re Cliffe, 3 Am. B. R. 257; 97 Fed. 540.

Person to be examined not entitled to notice of application, nor creditors.

In re Abbey Press (C. C. A. 2nd Cir.) (*supra*).

In re Abrahamson & Bretstein, 1 Am. B. R. 44.

Privilege from service of process in State court while attending meeting of creditors under subpoena.

Powell v. Pangborn (N. Y. App. Div.), 31 Am. B. R. 659; 161 App. Div. (N. Y.) 453; 145 N. Y. Supp. 1073.

After estate is closed, examination of third persons cannot be had.

In re Cobb, 7 Am. B. R. 104.

In re Sumner, 4 Am. B. R. 123; 101 Fed. 224.

Examination for purpose of framing specifications in opposition to discharge.

In re Price, 1 Am. B. R. 419; 91 Fed. 635.

Examination of wife of bankrupt since amendment of 1903.

What latitude allowed.

In re Worrell, 10 Am. B. R. 744; 125 Fed. 159.

See, Act of June 29, 1906, amending Rev. Stat. Sec. 858.

In re Kessler (D. C. Pa.), 35 Am. B. R. 30; 225 Fed. 394.

Bankrupt entitled to counsel.

In re Hark Bros., 14 Am. B. R. 624; 136 Fed. 986.

Witness other than bankrupt not entitled to counsel as matter of right.



In re Cobb, 7 Am. B. R. 104. In re Howard (*supra*).

In re Abbey Press (C. C. A. 2nd Cir.) (*supra*).

Special commissioner may administer oath to witness.

Wechsler v. U. S., 19 Am. B. R. 1; 158 Fed. 579; 86 C. C. A. 37.

And should be present at hearing to personally see and hear witnesses.

In re Rubin & Lipman (D. C. N. Y.), 32 Am. B. R. 295; 215 Fed. 669.

#### Scope of examination.

Great latitude allowed.

In re Horgan & Slattery (C. C. A. 2nd Cir.), 3 Am. B. R. 253; 98 Fed. 414; 39 C. C. A. 118; aff'g, s. c. 97 Fed. 319. In re Foerst, 1 Am. B. R. 259; 93 Fed. 190.

In re Pittner, 2 N. B. N. Rep. 915.

In re Carley, 5 Am. B. R. 554; 106 Fed. 862.

In re Hayden, 1 Am. B. R. 670; 96 Fed. 199.

In re Brundage, 4 Am. B. R. 47; 100 Fed. 613.

In re Fixen, 2 Am. B. R. 822; 96 Fed. 748.

Wechsler v. United States (C. C. A. 2nd Cir.), 19 Am. B. R. 1; 158 Fed. 579; 86 C. C. A. 37.

In re Lathrop, Haskins & Co. (D. C. N. Y.), 24 Am. B. R. 911; 184 Fed. 534.

In re Straschnow (C. C. A. 2nd Cir.), 24 Am. B. R. 948; 181 Fed. 337; 104 C. C.

A. 167.

Examination not extended to property acquired after filing of petition.

In re Hayden (*supra*).

In re White, 2 N. B. N. Rep. 536.

But see, In re Walton, 1 N. B. N. 533.

Meaning of words in statute, "concerning the property of the bankrupt."

In re Seligman (D. C. N. Y.), 26 Am. B. R. 664; 192 Fed. 750.

Impeaching credibility of hostile witness.

Hankinson v. Vantine, 152 N. Y. 20, 27.

In re Calvi (D. C. N. Y.), 26 Am. B. R. 206, 219; 185 Fed. 642.

Power to pass upon evidence.

In re Automatic Musical Co., 30 Am. B. R. 328; 204 Fed. 334.

Committed for contempt owing to contumacy and pretended lack of memory.

In re Schulman, 21 Am. B. R. 288; 160 Fed. 237; aff'd, 23 Am. B. R. 809; 177 Fed. 191; 101 C. C. A. 331.

#### Criminating questions.

Counselman v. Hitchcock (U. S. Sup.), 142 U. S. 547.

In re Kanter & Cohen, 9 Am. B. R. 104; 117 Fed. 356.

In re Hooks Smelting Co., 15 Am. B. R. 83; 138 Fed. 954. In re Scott, 1 Am. B. R. 49; 95 Fed. 815. In re Rosser, 2 Am. B. R. 755; 96 Fed. 305. In re Hathorn, 2 Am. B. R. 298. In re Walsh, 4 Am. B. R. 693; 104 Fed. 518.

Mackel v. Rochester (C. C. A. 9th Cir.), 4 Am. B. R. 1; 102 Fed. 314; 42 C. C. A. 427. In re Henschel, 7 Am. B. R. 207. In re Shera, 7 Am. B. R. 552; 114 Fed. 207.

In re Nachman, 8 Am. B. R. 180; 114 Fed. 995.

In re Franklin Syndicate, 4 Am. B. R. 511; 114 Fed. 205.

United States v. Brod, 23 Am. B. R. 740; 176 Fed. 165.

In re Feldstein, 4 Am. B. R. 321; 103 Fed. 260.

In re Bendheim (D. C. N. Y.), 24 Am. B. R. 254; 180 Fed. 918.

Does not exempt bankrupt from prosecution, if he voluntarily testifies.

Burrell v. State, 12 Am. B. R. 132; 194 U. S. 572; 48 L. Ed. 1122; aff'g 27 Mont. 282; United States v. Simon, 17 Am. B. R. 41; 146 Fed. 89.

Waiver of privilege.

In re Bendheim (*supra*).

In re Tobias Greenthal & Mendelson, 31 Am. B. R. 889; 215 Fed. 815.

When court is convinced that the answer to question cannot by any reasonable possibility incriminate, witness should be compelled to answer.

In re Levin (D. C. N. Y.), 11 Am. B. R. 382; 131 Fed. 388.

**Privileged communications.**

In re Ruos, 20 Am. B. R. 281; 159 Fed. 252.

People's Bank v. Brown (C. C. A. 3rd Cir.), 7 Am. B. R. 475; 112 Fed. 652; 50 C. A. 411.

In re Jefferson, 3 Am. B. R. 174; 96 Fed. 826; In re Mayer, 3 Am. B. R. 222; 97 Fed. 328.

**Use of examination in other proceedings.**

Wechsler v. United States (C. C. A. 2nd Cir.), 19 Am. B. R. 1; 158 Fed. 579; 86 C. A. 37; rev'g 16 Am. B. R. 1.

In re Wilcox, 6 Am. B. R. 362; 109 Fed. 628; 48 C. C. A. 567.

In re Alphin & Lake Cotton Co., 12 Am. B. R. 653; 131 Fed. 823.

Breckons v. Snyder, 15 Am. B. R. 112; 211 Pa. St. 176.

In re Shaw, 6 Am. B. R. 499; 109 Fed. 780; In re Keller, 6 Am. B. R. 334; 109 Fed. 118.

In reclamation proceedings after death of bankrupt his testimony at first meeting admissible.

In re Thompson (D. C. N. J.), 28 Am. B. R. 794; 197 Fed. 681.

When evidence taken on general examination under 21-a is admissible in discharge proceeding.

In re Malschick, 33 Am. B. R. 214; 217 Fed. 492.

Shaffer v. The Koblegard Co. (C. C. A. 4th Cir.), 24 Am. B. R. 898; 183 Fed. 71; 105 C. C. A. 363; aff'g In re Shaffer, 22 Am. B. R. 147; 169 Fed. 724.

When inadmissible.

In re National Boat & Engine Co., 33 Am. B. R. 154; 216 Fed. 208.

See Collier (10th Ed.), p. 331.

Use of stenographer's notes of testimony given by bankrupt at first meeting not read to witness or signed by him is admissible against him in a contempt proceeding when stenographer who took the notes is called and attests to their accuracy.

In re Kaplan Bros. (C. C. A. 3rd Cir.), 32 Am. B. R. 305; 213 Fed. 753; 130 C. C. A. 267.

**FORM No. 212.**

[Official.]

**ORDER FOR EXAMINATION OF BANKRUPT.**

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: right;"><i>Bankrupt.</i></p>	}	No.....
--	---	---------

At ....., on the ..... day of ....., A. D. 19..  
Upon the application of ....., trustee of said bankrupt  
[or creditor of said bankrupt], it is ordered that said bankrupt attend before  
....., one of the referees in bankruptcy of this court, at  
..... on the ..... day of ....., at .. o'clock  
in the ...noon, to submit to examination under the Acts of Congress relating  
to bankruptcy, and that a copy of this order be delivered to him, the said  
bankrupt, forthwith.

.....,  
*Referee in Bankruptcy.*

**NOTES.**

This form is little used. As a matter of practice the bankrupt is examined at the first meeting of creditors or adjournments thereof without formal order.

**Examination of bankrupt. Sec. 7 (9).**

In re Mellen, 3 Am. B. R. 226; 97 Fed. 326.

For framing specifications upon discharge.

In re Price, 1 Am. B. R. 419; 91 Fed. 635.

Examination of bankrupt after discharge and while estate is in process of administration.

In re Westfall Bros. & Co., 8 Am. B. R. 431.

See, In re Peters, 1 Am. B. R. 248.

His duty to testify fully.

In re Fellerman, 17 Am. B. R. 785; 149 Fed. 244.

In re Jacobs & Roth, 18 Am. B. R. 728; 154 Fed. 988.

May be punished for persistent evasive answers. In re Singer, 23 Am. B. R. 28; 174 Fed. 208.

A creditor even though he has not filed a claim is entitled to examine a bankrupt under the provision of Sec. 7-a.

In re Samuelsohn (D. C. N. Y.), 23 Am. B. R. 528; 174 Fed. 911.

How testimony taken is in discretion of referee.

In re Goldstein, 19 Am. B. R. 96; 155 Fed. 695.

Governed largely by local district rules.

Dressell v. North State Lumber Co., 9 Am. B. R. 541; 119 Fed. 531.

In re Sturgeon (C. C. A. 2nd Cir.), 14 Am. B. R. 681; 139 Fed. 608; 71 C. C. A. 592.

In re Lange, 3 Am. B. R. 231; 97 Fed. 197. In re Tudor, 4 Am. B. R. 78; 100 Fed. 796. In re Isaacson (D. C. N. Y.), 23 Am. B. R. 665; 175 Fed. 292.

Revival of proceedings for examination in discretion of court.

In re Bryant, 26 Am. B. R. 504; 188 Fed. 530.

Correction of testimony.

In re Hark Bros., 14 Am. B. R. 624; 136 Fed. 986.

### FORM No. 213.

#### PETITION BY TRUSTEE FOR ORDER OF EXAMINATION OF WITNESS AND FOR SUBPOENA.

United States District Court,

for the ..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

To

....., Esq.,

*Referee in Bankruptcy.*

The petition of ..... respectfully shows:

1. That he is the trustee herein, duly qualified and acting.
2. (That the bankrupt in this proceeding has left the jurisdiction and has not been present at any meeting of creditors. That the books of account have not come into the possession of the trustee, and your petitioner has been able to obtain but little information concerning the condition of this estate).
3. That upon information and belief certain payments were made to ..... of ..... which petitioner believes to have been preferential (or certain property has been transferred to ..... within the last three months which petitioner desires to investigate).

4. That in the opinion of your petitioner..... of .....,  
..... of ..... and ..... of ....., have  
certain information concerning the acts, conduct of said bankrupt and the  
property of the said bankrupt estate now in process of administration and  
that the persons aforesaid are in possession of certain papers which properly  
belong to this estate or would throw light on said transactions.

Wherefore, petitioner prays for an order under Section 21-a of the Bank-  
ruptcy Act requiring the above named persons to appear before the referee  
and be examined concerning the acts, conduct of the bankrupt and the property  
belonging to the bankrupt estate and that a subpoena (*duces tecum*) be issued  
by the clerk of this court directed to such persons.

.....,  
*Petitioner.*

[Verification.]

**FORM No. 214.**

**ORDER FOR EXAMINATION AND THAT SUBPOENA ISSUE.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER

OF

No.....

.....  
*Bankrupt.*

On reading and filing the petition of .....,  
the trustee herein, duly verified, and on motion of.....,  
attorney for said trustee, it is

Ordered, that ..... and .....  
appear before me for examination concerning the acts, conduct of the  
bankrupt and property belonging to the bankrupt estate herein now in  
process of administration, at my office, No. .... Street,  
City of ....., and that a subpoena be issued by the clerk  
of this court directed to such persons requiring them to be present at  
the time designated in said subpoena.

Dated ....., 19...

.....,  
*Referee in Bankruptcy.*



## FORM No. 215.

**PETITION THAT U. S. MARSHAL PRODUCE PRISONER FOR EXAMINATION.**

United States District Court,  
 for the ..... District of .....:  
 In Bankruptcy.

IN THE MATTER

OF

.....  
*Bankrupt.*

To the District Court of the United States,  
 for the ..... District of .....:

The petition of ..... respectfully shows and alleges:

That he is the receiver of the above named bankrupt. That heretofore, and on the ..... day of ....., 19.., an order was duly made and entered herein appointing ....., Esq., as Special Commissioner, to take the examination of ....., ....., ....., and others, and directing said persons named to appear before said Commissioner at a time and place thereafter to be fixed, to be there and then examined under oath concerning the acts, conduct and property of the bankrupt, and that a subpoena issue to said persons directing them so to appear.

That thereafter a subpoena was duly issued by the clerk of this court in accordance with the said order, returnable on the ..... day of ....., 19.., at .... o'clock in the ...noon before said commissioner at his office, No. ...., City of .....

That said subpoena has not been served upon said ....., ....., and ..... by reason of the fact that they, and each of them, are now in the custody of the United States marshal for the ..... District of ..... on warrants of arrest issued by a United States commissioner charging them, and each of them, with the commission of a crime and they, and each of them, are confined by said marshal in the ..... prison, in the City of ....., there to await the action of the Federal Grand Jury.

That your petitioner is desirous of examining the persons named in accordance with the order heretofore entered herein, and respectfully prays this Honorable Court, that an order be made and entered herein directing the

said United States marshal to produce said persons named before said commissioner at said time and place for examination under the provisions of Section 21-a of the Acts of Congress relating to bankruptcy, and in pursuance of the subpoena duly issued for that purpose.

And your petitioner will ever pray.

.....,  
*Petitioner.*

[Verification.]

**FORM No. 216.**

**ORDER THAT MARSHAL PRODUCE PRISONER FOR EXAMINATION.**

At a Stated Term of the United States  
District Court, held in and for the .....  
District of ....., at the Court  
House in the City of.....  
on the ..... day of..... 19..

PRESENT:

Hon.....,  
*District Judge.*

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p>.....</p> <p style="text-align: right;"><i>Bankrupt.</i></p>	}	No.....
--	---	---------

Upon reading and filing the annexed petition of ....., duly verified, and all the proceedings heretofore had herein and sufficient reason appearing therefor, it is, on motion of ....., Attorney for petitioner,

Ordered, that ....., the United States Marshal for the ..... District of ....., be, and he hereby is, directed to bring and produce ....., ..... and ..... before ....., Esq., a commissioner of this court, at his office No. .... in the City of ....., on the ..... day of ....., 19.., at ..... o'clock in the .....noon of said day, to testify all and singular with reference to the acts, conduct and property

of ..... , bankrupt, and at such other times and places as the said commissioner may direct.

..... ,  
D. J.

NOTES.

May also be procured, particularly when confined by order of State court, by writ of *habeas corpus ad testificandum*.

In re Thaw, 21 Am. B. R. 561; 166 Fed. 71, and 22 Am. B. R. 687; 172 Fed. 288.

FORM No. 217.

SUBPOENA TO APPEAR BEFORE SPECIAL COMMISSIONER.

The President of the United States of America, to.....  
.....  
.....

GREETING:

We command you, that all and singular business and excuses being laid aside, you and each of you be and appear in your proper persons, before.....  
..... a Commissioner appointed by the District Court of the United States of America for the ..... District of ..... in the ..... Circuit, at his office at the U. S. Court House in the City of ....., in the said ..... District of ....., on the ..... day of .....  
..... one thousand nine hundred and ..... at ..... o'clock in the ..... noon of the same day, to testify all and singular what you and each of you may know in a certain .....  
now pending undetermined in the .....  
of the United States, for the ..... District of ..... wherein  
.....  
.....  
.....  
on the part of the .....

And this you or either of you are not to omit, under the penalty upon each and every of you, of Two hundred and fifty dollars.

Witness, Hon. ...., Judge of the District Court of the United States, at the City of ....., the ..... day of ..... in the year of our Lord one thousand nine hundred and .....

..... ,  
Clerk.

**FORM No. 218.****SUBPOENA TICKET.**

By virtue of a writ of subpoena, to you directed and herewith shown, you are commanded and firmly enjoined, that laying all other matters aside and notwithstanding any excuse, you be and appear in your proper person before ..... a Commissioner duly appointed by the District Court of the United States of America, for the ..... District of ..... , at his office, at the U. S. Court House in the City of ..... , on the ..... day of ..... at ..... o'clock in the ..... noon of the same day, to testify all and singular you may know in a certain cause now pending in the ..... Court of the United States for the ..... District of ..... wherein ..... on the part of the ..... And this you are not to omit under the penalty of Two hundred and fifty dollars.

Dated this ..... day of ..... 19..

*By the Court.*

To .....

**NOTES.****Subpoena to appear and testify.**

Territorial effect.

*In re Hemstreet*, 8 Am. B. R. 760; 117 Fed. 568.

*In re Cole* (D. C. Me.), 13 Am. B. R. 300; 133 Fed. 414.

Examination of non-resident witness—how procured.

*In re Robinson* (D. C. Minn.), 24 Am. B. R. 617; 179 Fed. 724.

Witness fee \$1.50, and mileage.

Payment of fees.

*In re Johnson & Knox Lumber Co.* (C. C. A. 7th Cir.), 18 Am. B. R. 50; 151 Fed. 207; 80 C. C. A. 259.

*In re Marcus* (D. C. Vt.), 20 Am. B. R. 397; 160 Fed. 229.

Privilege of witness from service of process in State court while attending meeting of creditors.

*Powell v. Pangborn* (N. Y. App. Div.), 31 Am. B. R. 650; 161 App. Div. (N. Y.) 453; 145 N. Y. Supp. 1073.

See, as to such service in suit in Federal court.

*In re Smith Construction Co.* (D. C. Ga.), 35 Am. B. R. 227; 224 Fed. 228.

Proof of service by return of marshal or affidavit.

Disobedience of subpoena.

*In re Boeshore*, 10 Am. B. R. 802.

Where there has been no payment or tender of expenses and fees to a witness subpoenaed to appear before a referee at a place more than 100 miles from the place of his residence no attachment for disobedience should issue. *In re Kerber* (D. C. Pa.), 10 Am. B. R. 747.

**FORM No. 219.**

**SUMMONS TO WITNESS TO APPEAR BEFORE REFEREE.**

In the District Court of the United States,  
for the ..... District of .....

To .....  
.....  
.....  
.....  
.....

Whereas ..... of ....., in the County of ..... and State of ..... has been duly adjudged bankrupt, and the proceeding in bankruptcy is pending in the District Court of the United States for the ..... District of .....,

These are to require you, to whom this summons is directed, personally to be and appear before ....., one of the referees in bankruptcy of the said court, at ....., on the ..... day of ..... at ..... o'clock in the .....noon, then and there to be examined in relation to said bankruptcy.

Witness the Honorable ....., Judge of said court, and the seal thereof, at the City of ....., this ..... day of ..... A. D. 19...

.....  
*Clerk.*



**FORM No. 220.**

**SUBPOENA DUCES TECUM.**

The President of the United States of America,  
To .....

**GREETING :**

We Command You, That, all business and  
excuses being laid aside, you appear and  
attend before .....  
.....  
for the ..... District of .....  
at ..... in the United  
States Court ....., in the City of  
....., on the ..... day of  
..... at ..... o'clock in the  
.....noon, to testify and give evidence in  
a certain ..... now pending  
undetermined in the said Court, (between)  
.....

on the part of the ..... and that you bring with you and  
and produce at the time and place aforesaid, a certain  
.....  
.....

[ Here specify books, papers, documents, etc.]  
now in your custody, and all other deeds, evidences and writings which you  
have in your custody or power concerning the premises. And for a failure to  
attend, you will be deemed guilty of contempt of Court, and liable to pay all  
losses and damages sustained thereby to the party aggrieved, and forfeit Two  
hundred and fifty dollars in addition thereto.

Witness, The Honorable ....., Judge of the District Court  
of the United States for the ..... District of .....,  
the ..... day of ..... in the year of our Lord one  
thousand nine hundred and .....  
.....,

*Attorney,*

.....,

*Clerk.*

## NOTES.

**Production of books and papers.**

In re Hess, 14 Am. B. R. 559; 134 Fed. 109 and 136 Fed. 988.

In re Hart, 14 Am. B. R. 624; 136 Fed. 986.

In re Rosenblatt, 16 Am. B. R. 306; 143 Fed. 663.

In re E. S. Wheeler and Co. (C. C. A. 2d Cir.), 19 Am. B. R. 461; 158 Fed. 603; 85 C. C. A. 425; rev'g 18 Am. B. R. 421. In re Sapiro, 1 Am. B. R. 296; 92 Fed. 440.

In re U. S. Graphite Co. (D. C. Pa.), 20 Am. B. R. 280; 159 Fed. 300.

Order should be specific and certain.

Rawlins and Rawlins v. Hall Epps Clothing Co. (C. C. A. 5th Cir.), 33 Am. B. R. 237; 217 Fed. 884; 133 C. C. A. 594.

Hale v. Henkel (U. S. Sup.), 201 U. S. 43-76.

Failure to produce, punishable as a contempt.

In re Alper (D. C. N. Y.), 19 Am. B. R. 612; 162 Fed. 207.

Referee has power to make order for production of, during progress of examination. Subpoena *duces tecum* not then necessary.

In re Soloway and Katz, 28 Am. B. R. 228; 195 Fed. 100; and on further review s. c. 28 Am. B. R. 345; 195 Fed. 103.

Order compelling bankrupt to turn over books to a receiver in bankruptcy not an infringement of constitutional rights as self-incriminating evidence.

In re Harris (U. S. Sup.), 26 Am. B. R. 302; 31 Sup. Ct. 557; 221 U. S. 274; 55 L. Ed. 732; aff'g as certified, In re Harris (D. C. N. Y.), 20 Am. B. R. 911; 164 Fed. 292.

Not a question of rights, but of yielding property to which bankrupt is no longer entitled. s. c.

See, Counselman v. Hitchcock, 142 U. S. 547.

Waiver of self-incriminating testimony by surrender of books to bankruptcy officer.

In re Tracy and Co. (D. C. N. Y.), 23 Am. B. R. 438; 177 Fed. 532.

Sworn statement to tax assessor.

In re Reid, 17 Am. B. R. 477; 155 Fed. 933.

**Ancillary order.**

Where a court of bankruptcy may act summarily, another court of bankruptcy has ancillary jurisdiction and may make the same order in aid of the court of original jurisdiction and may order officers of the bankrupt corporation who are within its jurisdiction to deliver to the trustee books and papers of the corporation in their custody. Babbitt, Trustee v. Dutcher et al. (U. S. Sup.), 23 Am. B. R. 519; 216 U. S. 102; 54 L. Ed. 402; 30 Sup. Ct. Rep. 372.

See, Amendment of 1910, Sec. 2 (20).

**FORM No. 221.**

[Official.]

**RETURN OF SUMMONS TO WITNESS.**

In the District Court of the United States  
 for the ..... District of .....  
 In Bankruptcy.

<p style="text-align: center;">IN THE MATTER OF</p> <p style="text-align: center;">..... <i>Bankrupt</i></p>	}	No.....
--	---	---------

On this ..... day of ....., A. D. 19.., before me comes  
 ....., of ....., in the county of ..... and  
 State of ....., and makes oath, and says that he did, on  
 ....., the ..... day of ..... A. D. 19..,  
 personally serve ....., of ....., in the County of  
 ..... and State of ....., with a true copy of the  
 summons hereto annexed, by delivering the same to him; and he further makes  
 oath and says that he is not interested in the proceeding in bankruptcy named  
 in said summons.

.....

Subscribed and sworn to before me, this ..... day of .....,  
 A. D. 19...

.....

**FORM No. 222.**

[Official.]

**EXAMINATION OF BANKRUPT OR WITNESS.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: right;"><i>Bankrupt.</i></p>	}	No.....
--	---	---------

At ..... in said district, on the ..... day of .....,  
A. D., 19... before ....., one of the referees in bankruptcy of said  
court, being duly sworn and examined at the time and place above mentioned,  
upon his oath says: .....  
[Here insert substance of examination of party.]

Subscribed and sworn to before me this ..... day of ....., 19...  
.....,  
*Referee in Bankruptcy.*

**NOTES.**

**Testimony.**

Testimony of bankrupt a part of the record and creditors are entitled to access  
to it.

In re Samuelsohn, 23 Am. B. R. 528; 174 Fed. 911.

Referee not required to take notes of testimony personally or incur expense for  
clerical or stenographer's services without indemnity therefor. He should supervise the  
examination at expense of party taking it or he may allow it to be taken by the  
parties themselves.

In re Warzawiak, 1 National Bank'r News, 135.

**FORM No. 223.****PETITION THAT WITNESS SIGN TESTIMONY BEFORE REFEREE.**

United States District Court,  
 ..... District of .....:  
 In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

To ....., Esq.,  
*Referee in Bankruptcy.*

The petition of ..... respectfully shows:

1. That he is the trustee in bankruptcy herein, duly qualified and acting.
2. That at the first meeting of creditors herein held on ....., 19..., at the instance of petitioner, one ....., was examined as a witness in this proceeding, and his testimony duly transcribed.
3. Your petitioner through his attorney, has requested said witness to call at the office of the referee herein and sign his said testimony before said referee, but he, without adequate reason, has neglected and refused to sign same.
4. That no previous application has been made for the order asked for herein.

Wherefore, your petitioner prays for an order, directing the said witness ..... to appear at the referee's office on a day certain for the purpose of signing his testimony, or to show cause why he should not sign the same.

.....,  
*Petitioner.*

[Verification.]



**FORM No. 224.****ORDER THAT WITNESS SIGN TESTIMONY.**

United States District Court,  
 for the ..... District of .....:  
 In Bankruptcy.

IN THE MATTER

OF

.....  
*Bankrupt.*

Upon reading and filing the petition of ....., the trustee herein,  
 duly verified, and upon all the proceedings herein, and upon motion of .....  
 ....., attorney for the said trustee, it is

Ordered, that ..... attend at my office, No. .... in the  
 City of ....., on the ..... day of ....., 19...,  
 at ..... o'clock in the ..... noon, for the purpose of signing before  
 the referee, the testimony heretofore given by him in said proceeding or to  
 show cause why he should not be directed to so sign his said testimony.

Dated ....., 19...

.....,  
*Referee in Bankruptcy.*

**FORM No. 225.**

**PETITION FOR LEAVE TO OBTAIN ANCILLARY ORDER OF  
EXAMINATION.**

United States District Court,  
..... District of .....:  
In Bankruptcy.

IN THE MATTER

OF

.....  
*Bankrupt.*

To the District Court of the United States,  
for the ..... District of .....:  
The petition of ..... respectfully shows:

1. That he is the receiver (trustee) herein.  
2. That on the ..... day of ....., 19.., a petition in involuntary bankruptcy was filed herein by certain creditors against the above named ..... and on same day your petitioner was duly appointed receiver, duly qualified and is now acting as such receiver. That said bankruptcy proceeding is now pending, [or, that on the ..... day of ....., the said ..... was duly adjudicated a bankrupt and at the first meeting of creditors thereafter held before ..... Esq., as referee, your petitioner was duly appointed trustee, duly qualified and is now acting as such trustee.]

3. That in the administration of this estate, it is necessary to obtain an examination of ..... and ..... in aid of petitioner in the recovery of assets belonging to this estate, and such witnesses are or reside outside of the jurisdiction of this Court and within the ..... district of ..... at .....

Wherefore, your petitioner prays for an order granting him permission to apply to the District Court of the United States for the ..... district of ....., for an ancillary order of examination of the witnesses whose testimony is desired in aid of the receiver (trustee), and as to the acts, conduct and property of the bankrupt whose estate is in process of administration.

.....,  
*Petitioner.*

[Verification.]

**FORM No. 226.**

**ORDER GRANTING LEAVE TO APPLY FOR ANCILLARY ORDER OF EXAMINATION.**

At a Stated Term of the District Court  
of the United States, held in and for the  
..... District of ....., at  
the Court House in the City of .....  
on the ..... day of ....., 191..

Present:

Hon. ....,  
*District Judge.*

IN THE MATTER
OF
.....
<i>Bankrupt.</i>

..... receiver (trustee), herein having made application for  
leave to institute ancillary proceedings in the ..... district of .....  
for the purpose of obtaining an ancillary order of examination of certain  
witnesses being or residing in said ..... district of ..... and it  
appearing that said application is necessary and proper

Now, upon reading and filing the petition of ..... receiver  
(trustee) herein, duly verified and upon motion of ....., attorney  
for the petitioner, it is

Ordered, that the application be and hereby is granted and .....  
the receiver (trustee) herein, be and he hereby is authorized and empowered  
to apply to the District Court of the United States for the ..... district  
of ..... for an ancillary order of examination of such witnesses  
within the jurisdiction of said Court as may be necessary, as to the acts, con-  
duct or property of the bankrupt herein.

.....,  
*D. J.*

**FORM No. 227.**

**PETITION IN COURT OF ANCILLARY JURISDICTION FOR ORDER OF EXAMINATION.**

United States District Court,  
 ..... District of .....:  
 In Bankruptcy.

<p>IN THE MATTER</p> <p>OF</p> <p>.....</p> <p><i>Bankrupt.</i></p>
---

To the District Court of the United States,  
 for the ..... District of .....:

The petition of ..... respectfully shows and alleges:

1. That on the ..... day of ....., 19..., a petition in bankruptcy was filed against the above named bankrupt in the District Court of the United States for the ..... district of ..... (That on the .... day of ..... he was duly adjudicated a bankrupt in said court.)

2. That your petitioner was on the ..... day of ....., 19..., appointed temporary receiver of the said bankrupt in such court and thereafter duly qualified and is still acting as such receiver.

[or, That thereafter at the first meeting of the creditors of said bankrupt duly called and held in said district, petitioner was duly appointed trustee, duly qualified and is now acting as such trustee.]

3. That certain witnesses whose testimony is material and necessary in aid of petitioner as to the acts, conduct and property of the bankrupt whose estate is in process of administration, as hereinbefore set forth, are or reside within the jurisdiction of this court at .....

4. That said witnesses are as follows: .....  
 .....  
 (That certain documents to be examined are in the possession of .....  
 .....)

5. That ancillary proceedings to obtain such order of examination are necessary in this district and on the ..... day of ....., the District Court for the ..... district of ..... by an order entered therein, duly authorized petitioner to apply to this court for such ancillary order of examination.

Wherefore, petitioner respectfully prays for ancillary proceedings in this district in aid of petitioner and for an order for the examination of certain witnesses ..... and ..... before a referee or special commissioner to be appointed in this district concerning the acts, conduct or property of the bankrupt herein, whose estate is in process of administration in the District Court of the United States for the ..... District of ..... , and such other and further witnesses as may appear necessary, that a subpoena issue to secure the attendance of such witnesses and for such other and further relief as may be necessary.

.....,  
*Petitioner.*

[Verification.]

NOTES.

Sec. 2 (20).

Ancillary order for examination authorized.

In re Sutter Bros. (D. C. N. Y.), 11 Am. B. R. 632; 131 Fed. 654.

In re Sturgeon (C. C. A. 2d Cir.), 14 Am. B. R. 681; 139 Fed. 608; 71 C. C. A. 592.

In re Madson Steele Co. (Elkus, Petitioner) (U. S. Sup.), (citing Babbitt v. Dutcher), 23 Am. B. R. 614; 216 U. S. 115; 54 L. Ed. 407.

*Contra.*

In re Williams, 10 Am. B. R. 538; 123 Fed. 321.

FORM No. 228.

**ORDER FOR EXAMINATION IN COURT OF ANCILLARY  
JURISDICTION.**

At a Stated Term of the District Court  
of the United States, held in and for the  
..... district of ....., at the  
Court House, in the City of .....,  
on the ..... day of ....., 19...

Present:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

.....  
*Bankrupt.*

Upon the petition of ..... Esq., Receiver (Trustee) of..  
..... bankrupt, and it appearing that an involuntary petition in



bankruptcy has been filed and is now pending against the said .....  
in the District Court of the United States for the ..... District of  
.....; that said petitioner has been duly appointed by said court  
Receiver (Trustee) of the said bankrupt and has duly qualified as such  
officer; that said Receiver (Trustee) has been duly authorized to apply to  
this court for an order of examination of certain witnesses within the juris-  
diction of this court and that it is proper and necessary in aid of said Receiver  
(Trustee) that an ancillary order for the examination of said persons issue;  
Now, upon motion of ....., Esq., attorney for said petitioner, it is

Ordered, that the prayer of said petition, be and hereby is granted and an  
ancillary order of examination in aid of said ..... as Receiver  
(Trustee) of said bankrupt issue, and it is further

Ordered, that ..... and ..... of .....,  
appear before ....., Esq., who is hereby appointed Special Com-  
missioner for that purpose at a time and place to be designated by him and  
be examined concerning the acts, conduct and property of the said bankrupt  
whose estate is in process of administration in the District Court of the United  
States for the ..... District of ..... and that a subpoena  
issue directed to such persons.

.....,  
D. J.

### FORM No. 229.

#### NOTICE OF TAKING DEPOSITION (DE BENE ESSE).

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No. ....
---	---	----------

Please take notice that ..... and .....  
witnesses whose testimony is necessary in this proceeding and who reside at  
..... a greater distance than 100 miles from .....  
where the court is in which this proceeding is pending, or the place of trial

herein, will be examined (*de bene esse*) on the part of ..... in this proceeding before ..... Esq., Commissioner (or Notary Public) (duly appointed for, etc.) at his office No. .... St. in the City of ..... on the ..... day of ....., 19..., at ..... o'clock in the ..... noon, at which time and place you are hereby notified to be present and put interrogatories, if you shall think fit.

Dated, ..... the ..... day of ....., 19...

Yours, etc.,

.....,  
Attorney for .....  
(Address).

To ....., Esq.,  
Attorney for .....  
(Address.)

NOTE.

Consult R. S. 863 et seq.

**FORM No. 230.**

**DEPOSITION (DE BENE ESSE.)**

United States District Court,  
for the ..... District of .....  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER OF</p> <p>..... <i>Bankrupt.</i></p>	}	No.....
---	---	---------

United States of America, ..... District of ..... State of ..... County of .....	}	ss.
---	---	-----

On this ..... day of ....., 19..., before me .....,  
a commissioner duly appointed for the ..... District of .....  
under and by virtue of the Act of Congress (or a Notary Public in and for  
the County of ....., State of ....., duly qualified and  
acting) personally appeared at my office in the City of ..... in said  
..... District of .....  
a witness on the part of ..... in a certain bankruptcy proceed-  
ing now depending and undetermined in the District Court of the United  
States, for the ..... district of ....., wherein .....  
is the bankrupt. And the said ..... having been by me first  
cautioned and sworn to testify the whole truth, did thereupon depose and say:  
.....  
.....  
.....  
.....  
.....

Taken, subscribed and  
sworn to before me  
the .... day of ....,  
....., 19...

NOTES.

Depositions. Act Secs. 21b and c, 41a.—U. S. Revised Statutes, Secs. 863-865. Equity Rules XLVII, LIII, LIV, LV, LVI.

Usual method of obtaining testimony of necessary witnesses at a distance greater than 100 miles from place where proceeding is pending; does not exclude more formal method of a commission to take testimony.

In re Hemstreet, 8 Am. B. R. 760; 117 Fed. 568.

In re Cole, 13 Am. B. R. 300; 133 Fed. 414.

Notice of taking must be filed with the referee.

In re Robinson (D. C. Minn.), 24 Am. B. R. 617; 179 Fed. 724.

Motion to suppress deposition.

Carey v. Donohue (C. C. A. 6th Cir.), 31 Am. B. R. 210-215; 209 Fed. 328; 126 C. C. A. 254.

In re Washington Steel and Bolt Co., 32 Am. B. R. 153; 210 Fed. 984.

**Depositions de bene esse.**

Not received in evidence unless provisions of statute are strictly followed.

May be taken before any judge of a court of the United States, or any United States commissioner, clerk of a District Court or any notary public not being of counsel or attorney to any of the parties to the proceedings nor interested in the event. May also be taken without the United States before consular officer.

Reasonable written notice to adverse party is required and notice of the taking of depositions must be filed in every case with the referee in bankruptcy in charge of the proceedings. When taken in opposition to the allowance of a claim notice shall be served upon claimant and when in opposition to a discharge notice in same way to the bankrupt.

Attendance of witness compelled by subpoena.

---

**FORM No. 231.**

**CERTIFICATE OF COMMISSIONER OR NOTARY PUBLIC THEREON.**

United States of America, }  
 ..... District of ..... } ss.:  
 STATE OF .....  
 County of .....

I, ....., a Notary Public duly appointed in and for the County of ..... and State of ....., [or U. S. Commissioner] duly authorized under and by virtue of the acts of Congress of the United States, and of the Revised Statutes of the United States to take depositions, affidavits and bail in civil causes, depending in the courts of the United States, do hereby certify, that the reason for taking the foregoing depositions is, and the fact is, that the testimony of the witnesses, ..... and ....., is material and necessary in the proceeding in the caption of the said depositions named, and that they reside more than 100 miles from the district where the proceedings are pending. [or follow Rev. Stat. Sec. 863.]

I further certify, that due notification of the time and place of taking the

said depositions was served upon ....., attorneys for ... .., requiring them to be present at the taking of the deposition and to put interrogatories if he or they might think fit, of which a copy is hereto annexed, with due proof of service on said attorneys; and that on the ..... day of ....., in the year ....., I was attended by ....., Esq., and by witnesses who were of sound mind and lawful age, and the witnesses were by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth and nothing but the truth, and the depositions were by me reduced to writing, in the presence of the witnesses, and from their statements, and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of forwarding the same with my own hand to ....., Esq., Clerk of the United States District Court for the ..... District of ..... the Court for which the same are taken.

And I do further certify, that I am not of counsel or attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal, this ..... day of ....., in the year of our Lord one thousand, nine hundred and .....

.....,  
Notary Public ..... Co.

[or U. S. Commissioner  
..... District of .....]



## PART VII.

### SALES.

- FORM No. 232. Petition for Appraisal and Sale at Auction by Receiver before Adjudication.
233. Order for Appraisal and Sale before Adjudication.
234. Petition for Appraisal and Sale by Receiver after Adjudication upon sealed Bids.
235. Order for Appraisal and Sale after Adjudication upon sealed Bids.
236. Notice of Auction Sale by Receiver.
237. Notice of Sale by Receiver on sealed Bids.
238. Petition by Receiver for Sale of perishable Property.
239. Notice of Sale by Trustee.
240. Petition for private Sale by Trustee.
241. Order for private Sale by Trustee.
242. Petition for Sale at Auction of Real Estate.
243. Order for Sale at Auction of Real Estate.
244. Petition to Referee for Sale of perishable Property, and Order thereon.
245. Petition and Order for Sale subject to Lien.
246. Notice of Sale. (New Jersey Practice.)
247. Trustee's Memorandum of "Terms of Sale."
248. Petition for Sale free and clear of Liens.
249. Notice of Motion for Sale free and clear of Liens.
250. Order directing Sale free and clear of Liens.
251. Petition to confirm Sale.
252. Order confirming Sale.
253. Notice of Taxation of Auctioneer's Charges.
254. Order for Resale on Default of former Purchaser.
255. Petition to vacate Sale.
256. Order to show Cause why Sale should not be vacated.
257. Order vacating Sale.

**FORM No. 232.**

**PETITION FOR APPRAISAL AND SALE AT AUCTION BY RECEIVER  
BEFORE ADJUDICATION.**

United States District Court,  
for the ..... District of ..... :  
In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

To the District Court of the United States,  
for the ..... District of ..... :

The petition of ..... respectfully shows:

1. That by an order of this court, dated the ..... day of .....,  
19... , your petitioner was duly appointed receiver of the property, assets and  
effects of the above named bankrupt, has duly qualified and is now acting as  
such receiver.

2. That your petitioner as receiver is in possession of the property of the  
said bankrupt .....  
.....  
upon the premises No. ...., City of ....., where  
the bankrupt carried on business as ..... That your petitioner  
has closed the business and placed a custodian in charge of the premises.

3. That the property consists of the following:

.....  
.....  
..... is perishable in its nature  
and petitioner believes that it is absolutely necessary and for the best interests  
of the creditors of the above named bankrupt that all of the said property  
should be sold without delay. [Here set forth any reasons necessitating a sale  
and showing property to be perishable.]

(That the rent for the past month amounting to \$. .... has not been paid,  
and the landlord is endeavoring to force the receiver to vacate the premises.)  
That the said property is bulky and difficult to move, and in the opinion of  
your petitioner should be sold upon the premises.

4. That the consent of the bankrupt to said sale is hereto annexed.

5. No previous application has been made for the order asked for herein.

Wherefore, your petitioner prays for an order appointing appraisers of the property, assets and effects belonging to the above named estate, and that your petitioner be authorized to sell said property, assets and effects at public auction, pursuant to the rules of this court.

Dated ....., 19...

.....,  
*Petitioner.*

[Verification.]

I hereby consent to the entry of an order of sale of the assets and effects of said alleged bankrupt.

Dated ....., 19...

.....,  
*Attorney for Alleged Bankrupt.*

### FORM No. 233.

#### ORDER FOR APPRAISAL AND SALE BEFORE ADJUDICATION.

At a Stated Term of the United States  
District Court, held in and for the .....  
District of ....., at the Court  
House in the City of ....., on the  
..... day of ....., 19...

Present:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

On reading and filing the annexed petition of ....., receiver of the above named bankrupt duly verified, and all the proceedings had herein, and upon the annexed consent of ..... attorney for said bankrupt and sufficient reason appearing therefor, it is, on motion of ..... attorney for the said receiver, ,

Ordered, that ....., ....., and ....., all of the City of ....., three disinterested persons, be and they

hereby are appointed appraisers to appraise the property of the bankrupt; said appraisers to be duly sworn, and to report the result of their appraisal in writing to the Court with all convenient speed and

It is further ordered, that said ....., the receiver of the above named bankrupt, be and he hereby is authorized and directed to sell at public auction, pursuant to the rules of this court, all of the personal property belonging to this estate so appraised.

D. J.

#### NOTES.

##### **Receiver's sale.—Jurisdiction.**

Mason v. Wolkowich (C. C. A. 1st Cir.), 17 Am. B. R. 709; 150 Fed. 699; 80 C. C. A. 435.

In re Garner and Co., 18 Am. B. R. 733; 153 Fed. 914.

In re Becker, 3 Am. B. R. 412; 98 Fed. 407.

In re Kelly Dry Goods Co., 4 Am. B. R. 528; 102 Fed. 747.

In re R. F. Duke and Son, 28 Am. B. R. 195 (and foot note); 199 Fed. 199.

In re Desrochers (D. C. N. Y.), 25 Am. B. R. 703; 183 Fed. 991.

In re Peerless Finishing Co. (D. C. N. Y.), 28 Am. B. R. 429; 199 Fed. 350.

Petition should set forth facts showing that the property is in whole or part perishable or will greatly deteriorate by handling in due course of administration.

In re Harris, 19 Am. B. R. 635; 156 Fed. 875.

Application by ancillary receiver, when denied.

In re Brockton Ideal Shoe Co., 27 Am. B. R. 577; 194 Fed. 233.

Application should be made in first instance to court of original jurisdiction in most cases. *s. c.* (*supra*).

A receiver may be authorized by the referee, after adjudication, to sell property of a perishable nature.

In re Garner and Co. (*supra*).

Not so, however, in many jurisdictions.

A contingent interest in an estate may be sold.

In re Gutterson, 14 Am. B. R. 495; 136 Fed. 698.

Patents and patent rights.

In re Myers-Wolf Mfg. Co. (C. C. A. 3d Cir.), 30 Am. B. R. 572; 205 Fed. 289; 123

C. C. A. 441.

Objections to sale cannot be raised for first time on review.

In re Gutterson (*supra*).

Sale by receiver without an order of the court conveys no title.

In re Fulton (D. C. N. Y.), 18 Am. B. R. 591; 153 Fed. 664.

Muschel v. Austern (N. Y.), 87 N. Y. Supp. 235; 43 Misc. (N. Y.) 352.

In re Styer, 3 Am. B. R. 424; 98 Fed. 290.

Affirmance of receiver's sale by trustee.

Mason v. Wolkowich (*supra*).

Power of court to enforce completion of contract of sale.

Mason v. Wolkowich (*supra*).

Purchaser at a judicial sale submits himself to jurisdiction of the court and may be compelled to do so by rule or attachment issuing out of the court under whose decree the sale is had; applies to private sale confirmed as well as public sale.

In re J. Jungman and Co., Inc. (C. C. A. 2d Cir.), 26 Am. B. R. 401; 186 Fed. 302; 108 C. C. A. 380.

Camden v. Mayhew, 129 U. S. 73; 32 L. Ed. 608.

In some districts, as in Southern District of New York, official auctioneers are designated to conduct bankruptcy auction sales, and such appointment has been held valid.

In re Benjamin (C. C. A. 2d Cir.), 14 Am. B. R. 481; 136 Fed. 175; 69 C. C. A. 191; aff'g 13 Am. B. R. 18.

Sturgiss v. Corbin (C. C. A. 4th Cir.), 15 Am. B. R. 543; 141 Fed. 1; 72 C. C. A. 179.

#### **Practice on Sales.**

Order dispensing with provisions of local rule valid, as such rules are not jurisdictional.

In re Nevada-Utah Mines and Smelter Corporation (D. C. N. Y.), 28 Am. B. R. 409; 198 Fed. 497; aff'd, s. c. 29 Am. B. R. 754; 202 Fed. 126; 120 C. C. A. 440.

No upset price necessary in order.

Schuler v. Hassinger (C. C. A. 5th Cir.), 24 Am. B. R. 184; 177 Fed. 119; 100 C. C. A. 539.

Sufficiency of publication.

Local statutes do not bind Federal court in its administration of bankruptcy estates.

In re National Mining Exploration Co. (D. C. Mass.), 27 Am. B. R. 92; 193 Fed. 232.

Compare, In re Edes (D. C. Me.), 14 Am. B. R. 382; 135 Fed. 595.

Duty of trustee to accept bids.

Coal City House Furnishing Co. v. Hogue (In re Williams) (C. C. A. 4th Cir.), 28 Am. B. R. 258; 197 Fed. 1; 116 C. C. A. 523.

#### **What constitutes a bid.**

In re J. B. and J. M. Cornell Co. (D. C. N. Y.), 26 Am. B. R. 252; 186 Fed. 859.

#### **Who may purchase.**

Bondholders, stockholders or officers of bankrupt corporation may properly form reorganization committee of a new corporation and buy, if no attempt is made to stifle or exclude outside bidding.

In re Pittsburgh Dick Creek Mining Co., 28 Am. B. R. 613; 197 Fed. 106.



FORM No. 234.

PETITION FOR APPRAISAL AND SALE BY RECEIVER AFTER ADJUDICATION UPON SEALED BIDS.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No.....
---	---	---------

To the  
Honorable Judge of the District Court of the United States:  
for the ..... District of .....:  
The petition of ....., respectfully alleges and shows:

1. That on ....., 19..., he was duly appointed receiver in bankruptcy of the estate of the above named bankrupt and required to file a bond in the penalty of \$.....; that thereafter he filed his bond in the penalty required, and has continued to act and is still acting as such receiver.

2. That ....., the bankrupt above named, was engaged in ..... business in the City of .....; that upon qualifying as receiver, your petitioner took charge of the above named premises and all the assets therein contained; that by the order appointing your petitioner receiver herein, he was authorized to continue the business for a period of ..... days from the date thereof; that in pursuance of the authority so vested in your petitioner, he continued to carry on the business of the bankrupt upon the above premises. That the assets of the bankrupt, so far as your petitioner has been able to discover, consist of the following property contained in the premises ....., City of .....,  
.....  
.....  
.....

3. That the said ..... was duly adjudicated a bankrupt on the ..... day of ....., 19...; that some time must necessarily elapse before there can be a first meeting of creditors, election of a trustee and a sale by such trustee: That the business at present is being conducted at a loss and in the opinion of your petitioner is not profitable; that

it would be a mistake to allow the assets, belonging to the estate herein, to remain unsold until same could be sold by a trustee, and that such delay would involve great loss and expense to this estate, inasmuch as the value of the estate depends upon keeping the business as a going concern and the property is rapidly deteriorating in value.

4. That your petitioner verily believes that it would be for the best interests of the estate in his charge, that the assets belonging to the estate herein be sold at this time, as the court may direct; that your petitioner verily believes the best method of sale of the assets in his charge, would be to advertise for sealed bids for the entire business, equipment, good-will and unexpired term of the lease; that the said bids be opened on a day and time certain; that if the bids received are less than the appraised value, or if equal to the appraised value, but not satisfactory to your petitioner, that your petitioner sell said stock and fixtures at public auction within a few days thereafter, such period to be designated by the court; and that the creditors of the above named bankrupt, as they may appear on the schedule of creditors now on file herein, may receive such notice as the court may direct, and that such other notice may be given, as your petitioner may deem necessary and proper.

Wherefore, your petitioner would respectfully pray that he be authorized to sell the assets of the said bankrupt, now situated at ....., together with the good-will of the business and the unexpired term of the lease of the said premises, at private sale upon sealed competitive bids or at public auction, under such terms and conditions as this court may direct.

.....,

*Petitioner.*

[Verification.]

**FORM No. 235.****ORDER FOR APPRAISAL AND SALE UPON SEALED BIDS.**

At a stated term of the District Court  
of the United States for the .....  
District of ....., held at the Court  
House, City of ....., on the  
..... day of ....., 19...

Present:

Hon. ....,

*District Judge.*

IN THE MATTER

OF

.....

*Bankrupt.*

No. ....

Upon the petition, adjudication and all the proceedings herein, and upon the annexed petition of ....., receiver of the estate of the above named bankrupt, verified the ..... day of ....., 19...., and upon motion of ....., attorney for the said receiver, it is

Ordered, that ....., ..... and ....., three disinterested persons, be, and they are hereby appointed appraisers, to appraise the property, assets and effects in possession of the receiver herein; that they forthwith enter upon their duties as such appraisers, and after taking the oath required, file such appraisal in the office of the clerk of this court. And it is further ordered, that all the property, assets and effects of ..... the bankrupt above named, now in the possession of the receiver herein, situated at ..... (together with the good-will of the business of the said bankrupt, and the unexpired term of the lease of the said premises,) be sold to the highest bidder at private sale, on written competitive sealed bids, for a sum not less than the appraised value thereof, if in the opinion of the said receiver the said bid is the best that can be obtained therefor; or if the property be not so sold, then that the property be sold at public auction for a sum not less than seventy-five percentum of the appraised value, and according to the rules of this court. And

It is further ordered, that the said receiver mail notices of said sale to all the creditors of the said bankrupt, known to said receiver or as they may appear on the schedule of the said creditors, now in possession of the said receiver, and to all such dealers as he may think advantageous, offering a reasonable opportunity to inspect said property and for written bids to be sent

to him therefor; and the said notices shall also state that the said bids will be opened by the said receiver on a day and at an hour and place to be fixed by him, and that creditors may then attend and consider the bids, which notices shall be mailed at least five (5) days prior to that time; and that such notices shall further notify the creditors or other parties that if the receiver shall reject all bids submitted to him, the said property shall then be sold at public auction, according to the rules of this court, at a time and place fixed by the receiver, and such notices of sale shall be published in the ..... five days before the sale and on the morning of the sale, and in such other paper or papers as to the receiver may seem desirable and proper.

.....,  
D. J.

**FORM No. 236.**

**NOTICE OF SALE BY RECEIVER.**

United States District Court,  
..... District of .....:  
In Bankruptcy.

IN THE MATTER

OF

.....  
*Bankrupt.*

Pursuant to an order of this court, the undersigned, receiver of the above named bankrupt, offers for sale the property, assets and effects of said estate.

The property to be sold consists of .....  
.....  
and may be inspected at No. .... Street, in the City of .....  
on the ..... and ..... days of ....., 19..., between the  
hours of ..... A. M. and ..... P. M.

The said property will be sold at public auction by .....,  
auctioneer, at the above premises, in the City of ....., on the .....  
day of ....., 19..., at ..... o'clock in the ..... noon of said day.

The receiver reserves the right to withdraw any of said property from sale unless it shall bring at least seventy-five per cent. of the appraised value.

Dated ..... day of ....., 19...

.....,  
Receiver,

....., Attorney for receiver,  
..... Street, City of .....

**FORM No. 237.**

**NOTICE OF SALE BY RECEIVER ON SEALED BIDS.**

United States District Court,  
 ..... District of .....  
 In Bankruptcy.

<p style="text-align: center;">IN THE MATTER                  OF                  .....  <i>Bankrupt.</i></p>	}
---	---

Notice is hereby given that pursuant to an order of the United States District Court for the ..... district of ..... the undersigned, ....., receiver in bankruptcy of ....., offers for sale the property, assets, and effects of the said bankrupt.

The property, to be sold consists of the following: .....  
 .....  
 .....

[The business is being carried on by the receiver, and will be offered as a going concern on any bids for the entirety.]

The above described property will be sold subject to the following liens and encumbrances:  
 .....  
 .....

Further particulars in regard to said liens may be obtained from the receiver.

The above described property may be inspected on the premises from ..... to ....., 19.., between the hours of .... A. M. and ... P. M.

Bids for the above described property, assets and effects as an entirety may be submitted to the receiver at his office, No. .... Street, City of ....., on or before ..... o'clock in the .....noon of ....., 19.., at which time and place the bids will be opened by him, and creditors may attend and express themselves in reference thereto. Each bid must be accompanied by a certified check or cash for at least ten per cent. (10%) of the amount of the bid. The receiver reserves the right to



reject any or all bids, in which event the said property will be sold at public auction on the premises by ....., auctioneer, on ....., 19..., at ..... o'clock in the ..... noon.

Dated ....., 19...

.....,

*Receiver.*

..... Street,

City of .....

.....,

Attorney for Receiver,

..... Street,

City of .....

### FORM No. 238.

#### PETITION BY RECEIVER FOR SALE OF PERISHABLE PROPERTY.

United States District Court,

for the ..... District of .....:

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....

*Bankrupt.*

To the District Court of the United States,

for the ..... District of .....:

The petition of ..... respectfully shows and alleges:

1. That he is the receiver herein duly qualified and acting.

2. That your petitioner pursuant to the order of his appointment has taken possession of all the property, assets and effects of the above named alleged bankrupt at No. .... St., City of .....

3. That among the assets in his possession is the following: .....

That said property is perishable and unless sold forthwith will result in a complete loss to this estate.

4. That in the opinion of your petitioner it is absolutely necessary that same be sold at once.

Wherefore, he prays for an order authorizing and directing him to sell said property forthwith.

.....

*Petitioner.*

(Verification.)

**FORM No. 239.**

**NOTICE OF SALE BY TRUSTEE.**

United States District Court,  
for the ..... District of .....  
In Bankruptcy.

IN THE MATTER  
OF

No.....

.....  
*Bankrupt.*

**To the creditors of the above named bankrupt:**

Notice is hereby given that personal property belonging to the estate of the above named bankrupt will be sold under the direction of ....., the trustee, at public auction by ....., (United States) auctioneer, at No. ...., ..... St., City of ....., on the ..... day of ..... 19.., at .... o'clock in the .....noon. A general description of the property to be sold is as follows: [Here set forth property to be sold.]

The said property may be inspected at the above premises on any business day prior to the sale between the hours of .... A. M. and .... P. M.

The trustee reserves the right to withdraw any of the said property from sale unless it shall bring at least seventy-five per centum of the appraised value.

.....,

*Referee in Bankruptcy.*

Dated, ....., ..... 19...

.....,

Attorney for Trustee,  
[Address].

## NOTES.

**Notice to creditors.**

In re Monsarrat (No. 1) (D. C. Haw.), 25 Am. B. R. 815.

Trustee may sell stock of liquors in bulk without being obliged to take out a license or pay tax.

In re Becker, 2 National Bank News, 225.

Sale of property in other districts.

Bankruptcy Court has jurisdiction to order same.

T. E. Wells Co. v. Sharp (In re Plymouth Elevator Co.) (C. C. A. 8th Cir.), 31 Am. B. R. 344; 208 Fed. 393; 125 C. C. A. 609.

**FORM No. 240.****PETITION FOR PRIVATE SALE BY TRUSTEE.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER

OF

No. ....,

.....  
*Bankrupt.*

To ....., Esq., Referee in Bankruptcy:

Your petitioner respectfully shows:

That he is the trustee herein duly qualified and acting.

That a portion of such bankrupt's estate consists of the following property:

.....  
.....  
That it will be to the advantage of the estate that such property be sold forthwith at private sale for the following reasons and upon the following terms: .....

.....  
That no previous application has been made to this court for the order hereinafter asked.

Wherefore, your petitioner prays for an order permitting him to sell said property in the way and on the terms above specified.

.....,  
*Petitioner.*

[Verification.]

**FORM No. 241.**

**ORDER FOR PRIVATE SALE BY TRUSTEE.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER

OF

No.....

.....  
*Bankrupt.*

....., the trustee herein, having filed a duly verified petition praying for an order permitting him to sell at private sale, the following property: [Here specify property.]

.....  
.....  
on the terms set forth in said petition (and a meeting of creditors having been duly held upon 10 days' notice) and it appearing that good cause for such sale has been shown; now, on motion of ....., Esq., attorney for the trustee, it is

Ordered: That ....., the trustee herein, be, and he hereby is authorized to sell the property above specified to ..... for the sum of \$.....

And it is further ordered: That the said trustee keep an accurate account thereof and file same with the referee.

Dated ....., 19...

.....,  
*Referee in Bankruptcy.*

NOTES.

**Authority for sale.**

In re Edes, 14 Am. B. R. 382; 135 Fed. 595.

In re Peerless Finishing Co., 28 Am. B. R. 429; 199 Fed. 350.

In re Nevada-Utah Smelters Corp. (C. C. A. 2d Cir.), 29 Am. B. R. 754; 202 Fed. 126; 120 C. C. A. 440; aff'g, s. c. 28 Am. B. R. 409; 198 Fed. 497.

General Order XVIII construed.

In re Knox Automobile Co. (D. C. Mass.), 32 Am. B. R. 67; 210 Fed. 569.

## FORM No. 242.

## PETITION FOR SALE AT AUCTION OF REAL ESTATE.

In the District Court of the United States for the ..... District  
of .....  
In Bankruptcy.

IN THE MATTER  
OF

No. ....

.....  
*Bankrupt.*

To ....., Esq.,

*Referee in Bankruptcy:*

Respectfully represents ....., trustee of the estate of said bankrupt,  
that it would be for the benefit of said estate that a certain portion of the real  
estate of said bankrupt, to wit: [*here describe property and its estimated value*]  
should be sold by auction, in lots or parcels, and upon terms and conditions,  
as follows: .....

Wherefore, he prays that he may be authorized to sell said real estate as afore-  
said, and that a meeting of creditors be called on ten days' notice to consider  
same.

Dated this ..... day of ....., A. D. 19...

.....  
*Trustee.*

(Verification.)



## FORM No. 243.

## ORDER FOR SALE AT AUCTION OF REAL ESTATE.

United States District Court,  
 for the ..... District of .....  
 In Bankruptcy.

IN THE MATTER  
 OF

No. ....

.....  
*Bankrupt.*

....., as trustee of the estate of the above named bankrupt,  
 having filed in the office of the referee, a petition, verified .....  
 19.., praying that he be authorized by the creditors of the estate herein, to  
 sell at public auction, a certain portion of the real estate of said bankrupt,  
 to wit: (Here describe property fully) upon terms and conditions as follows:

.....  
 .....  
 .....  
 and that a meeting of the creditors be called to consider the prayer of the  
 said petition, and the said petition having come on for a hearing before me,  
 of which ten days' notice was given by mail to the creditors of the said bank-  
 rupt,

Now, after due hearing, (no adverse interest being represented thereat,) or  
 (after hearing ....., in favor of said petition and .....,  
 in opposition thereto), it is

Ordered, that the said trustee be authorized to sell the portion of the  
 bankrupt's real estate, specified in the said petition, at auction, keeping an  
 accurate account of each lot or parcel sold and the price therefor and to whom  
 sold; which said account he shall file at once with the referee.

Dated ....., 19..

.....,  
*Referee in Bankruptcy.*

## NOTES.

**Sale of bankrupt's real estate.**

In re La France Copper Co. (D. C. Mont.), 30 Am. B. R. 381; 205 Fed. 207.

Real estate transferred in fraud of creditors. Trustee's rights therein, when salable.

In re Downing (C. C. A. 2d Cir.), 29 Am. B. R. 228; 201 Fed. 93; 119 C. C. A. 431;  
aff'g, s. c. 27 Am. B. R. 309; 192 Fed. 683.

**FORM No. 244.****PETITION TO REFEREE FOR SALE OF PERISHABLE PROPERTY AND  
ORDER THEREON.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

To ....., Esq.,  
*Referee in Bankruptcy:*

Respectfully represents ..... the said bankrupt, (or a creditor, or the receiver, or the trustee of the said bankrupt's estate).

That a part of the said estate, to wit, .....

.....  
now in ....., is perishable, and that there will be loss if the same is not sold immediately.

Wherefore, he prays the court to order that the same be sold immediately without notice.

Dated this ..... day of ....., A. D. 19...

[Verification.]

The foregoing petition having been duly filed and having come on for a hearing before me, now, after due hearing, no adverse interest being represented thereat, I find that the facts are as above stated, and that the same

is required in the interest of the estate, and it is therefore ordered that the said property be sold forthwith.

Witness my hand this ..... day of ....., A. D. 19...

.....  
*Referee in Bankruptcy.*

#### NOTES.

##### **Perishable property.**

What is, "perishable property."

In re Smith, 1 N. B. N. 180, 204.

In re Pedlow (C. C. A. 2d Cir.), 31 Am. B. R. 761; 209 Fed. 841; 126 C. C. A. 565.

Stock of hardware not so regarded. In re Beutel's Sons Co., 7 Am. B. R. 768.

In re Roberts (Smithson v. Emmerson) (C. C. A. 7th Cir.), 21 Am. B. R. 573; 166 Fed. 96; 92 C. C. A. 80.

When real estate may be so considered.

In re Milne Mfg. Co. (D. C. N. Y.), 21 Am. B. R. 468.

Discretionary power of referee not disturbed unless it clearly appears that discretion was improvidently exercised.

In re Hawkins (D. C. N. Y.), 11 Am. B. R. 49; 125 Fed. 633.

##### **Notice to creditors.**

In re Milne Mfg. Co. (*supra*).

## FORM No. 245.

[Official.]

## PETITION AND ORDER FOR SALE SUBJECT TO LIEN.

In the District Court of the United States for the ..... District  
of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

Respectfully represents ....., trustee of the estate of said bankrupt, that a certain portion of said bankrupt's estate, to wit: [*Here describe the estate or property and its estimated value*] is subject to a mortgage [*describe mortgage*], or to a conditional contract [*describe it*], or to a lien [*describe the origin and nature of the lien*], or [*if the property be personal property*] has been pledged or deposited and is subject to a lien for [*describe the nature of the lien*], and that it would be for the benefit of the said estate that said property should be sold, subject to said mortgage, lien, or other incumbrance. Wherefore he prays that he may be authorized to make sale of said property, subject to the incumbrance thereon.

Dated this ..... day of ....., A. D. 19...

.....,  
Trustee.

## (Verification.)

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [*or after hearing ..... in favor of said petition and ..... in opposition thereto*], it is ordered that the said trustee be authorized to sell the portion of the bankrupt's estate specified in the foregoing petition, by auction [*or, at private sale*], keeping an accurate account of the property sold and the price received therefor and to whom sold; which said account he shall file at once with the referee.

Witness my hand this ..... day of ....., A. D. 19...

.....  
Referee in Bankruptcy.

[NOTE.—It is suggested that the petition herein should be addressed to referee.]

NOTES.

**Sale subject to incumbrances.**

Purchaser takes property charged therewith.

In re Gerry, 7 Am. B. R. 459; 112 Fed. 957, 959.

When Bankruptcy Court has custody of the *res* its jurisdiction is exclusive.

In re Zehner (D. C. La.), 27 Am. B. R. 536; 193 Fed. 787.

Rights of lienors not affected.

In re Muhlhauser Co. (C. C. A. 6th Cir.), 10 Am. B. R. 236; 121 Fed. 669; 57 C. C. A. 423.

In re Platteville, etc., Co., 17 Am. B. R. 291; 147 Fed. 828.

Where there is no surplus for bankrupt estate, trustee not entitled to compensation from lienors.

Smith v. Township of Au Gres (C. C. A. 6th Cir.), 17 Am. B. R. 745; 150 Fed. 257; 80 C. C. A. 145.

Not chargeable with general expenses of estate nor of receivership.

In re Clark Coal and Coke Co., 23 Am. B. R. 273; 173 Fed. 658.

In a sale of a stock exchange seat the proceeds pass to trustee for distribution according to the rules of the exchange as against general creditors.

In re Gregory (C. C. A. 2d Cir.), 23 Am. B. R. 270; 174 Fed. 629; 98 C. C. A. 383. Compare, Hyde v. Woods, 94 U. S. 523; 24 L. Ed. 318.

Page v. Edmunds, 187 U. S. 596; 47 L. Ed. 318; 9 Am. B. R. 277.

*Contra.* Cohen v. Budd, 17 Am. B. R. 329; 117 App. Div. (N. Y.) 922; 102 N. Y. Supp. 1133.

**FORM No. 246.**

**NOTICE OF SALE (PRACTICE IN DISTRICT OF NEW JERSEY).**

United States District Court,  
for the ..... District of .....

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	<p>No. ....</p> <p>Notice of Sale.</p>
---	---	--

Notice is hereby given that ....., Receiver in Bankruptcy of the above named bankrupt, will offer for sale the following described property, to wit:

The stock of merchandise consisting of ....., together with the furniture, fixtures, equipment, good-will, etc., of the business now conducted at No. .... in the City of ..... N. J., in the following manner: Sealed bids are invited for the said property in lots and as a whole, such bids to be opened by the receiver herein at the



office of the referee in the ..... Building, City of .....,  
New Jersey, on the ..... day of ....., 19..., at .....  
o'clock in the forenoon of said day, and (one-half) hour after the opening of  
such bids the receiver will offer the said property at public auction, both in  
lots and as a whole at the premises of said bankrupt, ....., at  
No. .... Street, in the City of ....., New Jersey,  
by ....., auctioneer, the bidding to be started at the high-  
est sealed bid for each lot and for the whole, and the property to be sold  
subject to confirmation by the court to the bidder or bidders whose bid or  
bids realizes the best price to the estate, at least 25 per cent. of such highest  
bid or bids to be paid as a deposit by such highest bidder or bidders.

The property to be sold may be inspected at the premises No. ....  
Street, ....., New Jersey, on the ....., .....,  
..... and ..... of ....., 19.., between the  
hours of .... A. M. and .... P. M., and further particulars in regard to said  
sale may be obtained from the receiver at his office in the ..... Build-  
ing, ....., New Jersey, or from the undersigned, attorneys of said  
receiver. The receiver reserves the right to reject any and all bids.

Take further notice that the undersigned receiver will make his report of  
sale and application for confirmation thereof before ....., Esq.,  
Referee in Bankruptcy, at his office No. .... Street, City of  
....., on the ..... day of ....., 19.., at ....  
o'clock in the forenoon.

Dated ....., New Jersey, ....., 19..  
.....,  
Receiver.  
.....,  
..... N. J.  
.....,  
Attorney for Receiver.  
[Address.]

**FORM No. 247.**

**TRUSTEE'S MEMORANDUM OF "TERMS OF SALE".**

United States District Court,  
for the ..... District of .....  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER OF</p> <p style="text-align: center;">..... <i>Bankrupt.</i></p>	}	No. ....
---	---	----------

**TERMS OF SALE BY TRUSTEE OF REAL ESTATE.**

(1) The real estate to be sold is described as follows: .....  
.....  
.....  
.....  
.....

(2) ..... (....%) per cent. of the purchase price of the said real estate in certified check or cash shall be paid to the auctioneer at the time and place of the sale for which he will render a receipt to the purchaser.

(3) The residue of the said purchase price must be paid to .....  
....., as trustee, at the office of his attorneys, .....  
No. .... Street, City of ....., on the .....  
day of ....., 19.., at 12 noon, when the deed to the said property will be ready for delivery, and the title closed.

(4) The trustee is not required to send any notice to the purchaser; and if he neglects to call at the time and place above specified and receive his deed, he will be charged interest thereafter on the whole amount of his purchase, unless the trustee shall deem it proper to extend the time for the completion of the said purchase.

(5) The said trustee will convey the title to the purchaser in fee simple subject only to a mortgage of \$....., and accrued interest at .....  
(..%) per cent. per annum, from the ..... day of ....., 19...

All other encumbrances, taxes and assessments which at the time of the sale are liens or encumbrances upon said premises, will be allowed out of the purchase money, provided the purchaser shall, previous to the delivery of the deed, produce to the said trustee proof of such liens, and the existence of any unpaid taxes or assessments shall not be deemed to be an objection to the title, provided the amount thereof is so allowed.

(6) The purchaser of the said real estate shall at the time and place of sale sign a memorandum of his purchase.

(7) It is understood and agreed that the auctioneer or the said trustee is not responsible for any interest on the .....% deposited under the terms of sale.

(8) This sale is made subject to the approval of the United States District Court for the ..... District of ....., the trustee reserving the right to reject any and all bids made, but it is understood however, that the trustee shall inform the purchaser whether his bid has been accepted or rejected on or before the ..... day of ....., 19..

Dated ....., 19...

#### NOTES.

##### **Relieving purchaser from bid.**

In re Caponigri (C. C. A. 2d Cir.), 32 Am. B. R. 158; 210 Fed. 897; 127 C. C. A. 466.  
Purchaser not relieved from bid because of "puffer."

Williams v. Hogue (C. C. A. 4th Cir.), 34 Am. B. R. 40; 219 Fed. 182; 134 C. C. A. 556.

Sale of trustee's rights under a lease. Purchaser held to have no right to rescind and recover purchase price.

In re Frazin and Oppenheim (C. C. A. 2d Cir.), 29 Am. B. R. 212; 201 Fed. 343; 120 C. C. A. 391.

Sale of good will and corporate name.

S. F. Myers Co. v. Tuttle (D. C. N. Y.), 26 Am. B. R. 541; 188 Fed. 532.

Medical and surgical practice and good will of a physician not assets passing to trustee.

In re Myers, 31 Am. B. R. 24.

Rejection of bid and sale to a third party.

In re Chandler (C. C. A. 7th Cir.), 28 Am. B. R. 89; 194 Fed. 944; 114 C. C. A. 580.

Petition to compel purchaser to complete purchase.

In re Myers-Wolf Mfg. Co. (C. C. A. 3d Cir.), 30 Am. B. R. 572; 205 Fed. 289; 123 C. C. A. 441.

Sale of liquor license.

In re Doyle and Sons, 30 Am. B. R. 58; rev'd, 31 Am. B. R. 571; 209 Fed. 1; 126 C. C. A. 143.

**FORM No. 248.**

**PETITION FOR SALE FREE AND CLEAR OF LIENS.**

United States District Court,  
 ..... District of .....:  
 In Bankruptcy.

IN THE MATTER  OF  ..... <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No. ....
---	---	----------

To the District Court of the United States,  
 for the ..... District of .....:

The petition of ..... respectfully shows and alleges:

First: That your petitioner was heretofore and on the ..... day  
 of ....., 19.., duly appointed the trustee in bankruptcy of all of  
 the property of the above bankrupt and has duly qualified as such by filing his  
 bond in this court in the sum of \$..... conditioned for the faithful per-  
 formance of his duties, and is now acting as such trustee.

Second: That your petitioner has taken possession of all the property of  
 the said bankrupt which includes the following described real and personal  
 estate located at the Town of ....., ..... County,  
 State of .....

All that certain tract or parcel of land, with the buildings thereon erected  
 and all machinery connected with or attached to said building and property,  
 situate in the Town of ....., County of ..... and State  
 of ....., bounded as follows:

.....  
 .....  
 .....

Together with all and singular, the tenements, hereditaments and appur-  
 tenances belonging to the said property: and the reversion, remainders, tolls,  
 income, rents, issue and profits thereof including all chattels, fixtures, furnish-

ings, machinery, tools and every other estate, right, title and interest, property and appurtenances of the said .....

Third: That heretofore and on the ..... day of ....., 19.., an involuntary petition in bankruptcy was filed herein against the above named bankrupt, and theretofore and within four months prior to the date of the filing of the said petition, to wit, on the ..... day of ..... 19..., the said bankrupt for and in consideration of the alleged sum of \$....., made, executed and delivered a certain bond and mortgage covering all of the above described property, to ....., [a corporation organized under and existing by virtue of the laws of the State of .....]

Fourth: That the said alleged bond and mortgage were, as your petitioner is informed and does verily believe, executed and delivered under the following circumstances:

That on the said ..... day of ....., 19.., and for a considerable period prior thereto, the said bankrupt above named was insolvent and that his property at a fair valuation was insufficient to pay all of his debts in full, which said debts, as your petitioner is informed and does verily believe, did on said .... day of ....., 19.., and prior thereto, aggregate the sum of about \$.....; and that all of his assets of whatsoever kind, character, nature or description, did not exceed in value the sum of about \$.....

Fifth: That on said ..... day of ....., 19.., the said bankrupt was indebted to ..... in the sum of \$....., which said indebtedness consisted of two promissory notes in writing, made, executed and delivered by ..... to ....., each for the sum of \$.....

Sixth: That on said ..... day of ....., 19.., the said notes of \$....., due on that day, were not paid by the said bankrupt, and were thereupon duly protested for non-payment by the said ....., on which said day, as your petitioner is informed and verily believes, the said ..... knew and had reasonable cause to believe that the said ....., was insolvent and unable to pay his debts; and that thereafter and on the ..... day of ....., 19.., well knowing that the said ....., was insolvent and having good and reasonable cause to so believe, and without any present fair consideration, and as security for an antecedent indebtedness, he did accept and take the said bond and mortgage for the said sum of \$..... on said real and personal property hereinbefore mentioned and described.

Seventh: That heretofore and by order of this court, all of the said property hereinbefore mentioned and described, was duly appraised at the sum of \$....., and as your petitioner is informed and does verily



believe, the said property if sold by your petitioner subject to the said mortgage of \$....., above mentioned, will not realize any equity whatsoever by reason of the fact that the said property is not worth the amount of the said mortgage and that no one interested in property of this character would purchase said property subject to it.

Eighth: That your petitioner proposes to institute legal proceedings in this Court to declare void and of no effect, the said mortgage and to have the same annulled and cancelled as of record, upon the ground that under and by virtue of the terms and conditions of the Acts of Congress relating to bankruptcy, the giving of the said mortgage was preferential as security for an antecedent indebtedness and for no present fair consideration passing at the time of the execution and delivery thereof; and upon the further ground that the said mortgage constituted a preference by reason of the fact that at the time that the said bond and mortgage were executed and delivered, the said ..... receiving the same, knew and had reasonable cause to know and believe that the said bankrupt was insolvent.

Ninth: That your petitioner has examined and caused to be examined ....., and other witnesses, to all of which testimony your petitioner upon the hearing of the application herein made begs leave to refer and from which said examination the facts as hereinbefore alleged do more particularly and at length appear.

Tenth: That your petitioner in the performance of his duties as said trustee, is desirous of immediately disposing of all of the property of the bankrupt herein, and in order so to do most advantageously to the interest of the creditors of the said bankrupt, does verily believe that the said property should be sold free of and from the lien of the said mortgage of \$....., which said mortgage in detail covers the said property as hereinbefore described, and which was made, executed and delivered on said .....day of ....., 19.., by the said ....., bankrupt herein, for the said sum of \$....., and which was thereafter and on the ..... day of ....., 19.., duly recorded in Liber ..... of Mortgages at page ..... in the office of the clerk of the County of ....., State of .....

Wherefore, your petitioner does respectfully pray this Honorable Court that an order be made herein, requiring ....., mortgagee to show cause before this court at a time and place to be stated, why an order should not be made and entered herein, directing that all of the property mentioned and described in the petition herein and covered by the said mortgage herein referred to, be sold by your petitioner as trustee of the said bankrupt, at public auction and in the manner prescribed by the Acts of Congress relating to Bankruptcy, and the General Orders of the Supreme Court of the United States, free of and from the lien of the said mortgage and why the proceeds

arising of and from the sale of the said property should not be held by your petitioner subject to the lien of the said mortgage, to all intents and purposes as though the said property had not been sold, subject to the final order, judgment and decree of this court, or the final order, judgment and decree of a court of competent jurisdiction, as to the validity of the said mortgage and why your petitioner should not have such other and further relief as to this Honorable Court may seem just and proper.

And your petitioner will ever pray, etc.

Dated ....., 19...

.....,

*Petitioner.*

.....,

*Attorney for Trustee,*

Office and Post-office address,

..... Street,

City of .....

[Verification.]

### FORM No. 249.

#### NOTICE OF MOTION FOR SALE FREE AND CLEAR OF LIENS.

United States District Court,

for the ..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No.....

.....  
*Bankrupt.*

Please take notice that upon the annexed petition of ....., trustee in bankruptcy of the above named bankrupt, verified .....

19.., the annexed affidavit of ....., verified ..... 19.., the ..... (mortgage, etc.) a copy whereof is hereto annexed, from ..... to ....., bearing date ....., 19.., and upon all the proceedings and testimony taken herein, a motion will be made by the undersigned on behalf of the trustee herein before ..... Esq., referee in bankruptcy, in charge of this proceeding, at his office, No. .... Street, in the City of ....., on the ..... day of ....., 19.., at ... o'clock in the ..... noon, or as soon thereafter as counsel can be heard, for an order authorizing and directing ....., as trustee in bankruptcy of the estate of the above named bankrupt, to sell the property mentioned in the annexed petition of the trustee herein, and situated at ....., and that the said trustee be authorized and directed to sell and dispose of the aforesaid property, now in his possession, and claimed to belong to this estate, free and clear of all liens and demands thereon, including an alleged mortgage of ..... to ....., dated ..... 19.., and that the proceeds arising from the sale of the said property be held by the trustee subject to the claims, liens and demands of the alleged mortgagees, lienors and claimants, and that the said mortgages, liens, claims and demands attach to the proceeds of such sale with the same force and effect as if upon the property itself, subject to the final order, judgment and decree of this court or of a court of competent jurisdiction as to the validity, bona fides and extent of such mortgage, lien, claim and demand; And for such other and further relief as to this court may seem just and proper.

Dated ....., 19...

.....  
*Attorney for Petitioner,*  
 (Address.)

To .....  
 { Claimant or }  
 { Alleged Mortgagee. }

**FORM No. 250.****ORDER DIRECTING SALE FREE AND CLEAR OF LIENS.**

United States District Court,  
for the ..... District of .....  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER OF  ..... <i>Bankrupt.</i></p>	}	No.....
---	---	---------

An order having been heretofore made herein requiring ..... to show cause before this court, at the office of ....., Esq., referee, why an order should not be made herein, directing that certain of the property, now in the possession of said trustee and mentioned and described in the petition annexed to the said order and alleged to be covered by the mortgage therein referred to, be sold by the said trustee at public auction, and in the manner prescribed by the Acts of Congress relating to bankruptcy and the General Orders of the Supreme Court of the United States, free of and from the lien of the said mortgage, and why the proceeds arising of and from the sale of the said property should not be held by the said trustee subject to the lien of the said mortgage, to all intents and purposes as though the said property had not been sold: subject to the final order, judgment and decree of this court, or of the final order, judgment or decree of a court of competent jurisdiction, as to the validity, bona fides and extent of the said mortgage, and for other and further relief,

Now, upon reading and filing the said order to show cause, and the petition of ....., trustee thereto annexed, verified the ..... day of ....., 19..,

And upon the petition in bankruptcy herein, the testimony taken at the first meeting of creditors in support of the said application; and the said ..... having duly appeared upon the return of said order to show cause and duly filed his answer, verified the ..... day of ....., 19.., the affidavits of ..... and ....., duly verified the ..... and ..... days of ..... 19.., in opposition to the said application,

And after hearing respective counsel for the trustee and the ....., and due deliberation having been had; and it appearing to the satisfaction of this court that the best interests of the creditors of the said bankrupt above named will be subserved by the granting of the application, and for divers other reasons that the said application is proper, it is hereby

Ordered, adjudged and decreed, that ....., Esq., as trustee of ....., bankrupt, be, and he hereby is authorized, directed and permitted to sell and dispose at public auction, and in the manner and mode as prescribed by the Acts of Congress relating to bankruptcy and the General Orders of the Supreme Court of the United States, all of the property of the ....., bankrupt, situated at ..... more particularly mentioned and described in a certain indenture of mortgage heretofore made by ....., to ....., for the sum of \$..... dated the ..... day of ....., 19..., and recorded on the .... day of ....., 19..., at ..... o'clock, .. M., in Liber ..... of mortgages, at page ....., in the office of the Clerk of the County of ....., State of .....

And it is further ordered, adjudged and decreed, that the said ....., as said trustee, be, and he hereby is authorized, directed and permitted to sell and dispose of the said property in said mortgage more particularly mentioned and described, free of and from the lien of the said mortgage hereinbefore described, and that the proceeds arising of and from the sale of the said property be held by the said trustee, subject to the lien of the said mortgage, to all intents and purposes as though the said property had not been sold: subject to the final order, judgment and decree of this court or the final order, judgment and decree of a court of competent jurisdiction, as to the validity, bona fides and extent of the said mortgage.

Dated, City of ....., 19...

.....  
*Referee in Bankruptcy.*

#### NOTES.

##### **Sale free and clear of liens.**

No specific provision in the Act therefor, but practice under general equity powers almost uniformly upheld.

##### **As to jurisdiction, see**

In re U. S. Graphite Co., 20 Am. B. R. 573; 161 Fed. 583.

In re Pittelkow, 1 Am. B. R. 472; 92 Fed. 901.

In re Worland, 1 Am. B. R. 450; 92 Fed. 893.

In re Keet, 11 Am. B. R. 117; 128 Fed. 651.

In re Wilka, 12 Am. B. R. 727; 131 Fed. 1004.

In re Littlefield (C. C. A. 1st Cir.), 19 Am. B. R. 18; 155 Fed. 838; 84 C. C. A. 42.

In re Granite City Bank of Dell Rapids (C. C. A. 8th Cir.), 14 Am. B. R. 404; 137 Fed. 818; 70 C. C. A. 316; aff'g S. C. 12 Am. B. R. 727.

In re New England Piano Co. (C. C. A. 1st Cir.), 9 Am. B. R. 767; 122 Fed. 937; 59 C. C. A. 431.



Southern Loan and Trust Co. v. Benbow, 3 Am. B. R. 9; 96 Fed. 514.

In re Barber, 3 Am. B. R. 306; 97 Fed. 547.

Putnam v. Loveland, 19 Am. B. R. 18; 155 Fed. 838.

In re M. E. Tucker, Pet., 18 Am. B. R. 378.

In re Gerry, 7 Am. B. R. 459; 112 Fed. 957.

In re McMahon (C. C. A. 6th Cir.), 17 Am. B. R. 530; 147 Fed. 684; 77 C. C. A. 668.

Sturgiss v. Corbin, 15 Am. B. R. 543; 141 Fed. 1; 72 C. C. A. 179.

In re The American Architects Tube Co. (In re E. A. Kinsey Co.) (C. C. A. 6th Cir.), 25 Am. B. R. 651; 184 Fed. 694; 106 C. C. A. 648.

In re Throckmorton (C. C. A. 6th Cir.), 28 Am. B. R. 487; 196 Fed. 656; 116 C. C. A. 348.

Such sale may be ordered, even though property or lienor is without the territorial jurisdiction of the court.

In re Wilka (*supra*).

In re Granite City Bank of Dell Rapids (*supra*); or incumbrances equal value of property.

In re Keet (*supra*).

In re New England Piano Co. (*supra*).

Discretionary with Bankruptcy Court and not subject to collateral attack.

Equitable Trust Co. v. Vanderbilt Realty Improvement Co. (N. Y. App. Div.), 31 Am. B. R. 834; 155 App. Div. (N. Y.) 723; 140 N. Y. Supp. 1008.

**Should be ordered only when it appears that such sale will be advantageous to bankruptcy estate and not injurious to lienors.**

In re Shaeffer, 5 Am. B. R. 248; 105 Fed. 352.

In re Goldsmith, 9 Am. B. R. 419; 118 Fed. 763.

In re Gerdes, 4 Am. B. R. 346; 102 Fed. 318.

In re U. S. Graphite Co. (*supra*).

See, In re Alden, 16 Am. B. R. 362.

In re Styer, 3 Am. B. R. 424; 98 Fed. 290.

In re Foster (D. C. Vt.), 25 Am. B. R. 96; 181 Fed. 703.

In re Roger Brown and Co. (C. C. A. 8th Cir.), 28 Am. B. R. 336; 196 Fed. 758; 116 C. C. A. 386.

In re Fayetteville Wagon etc. Co., 28 Am. B. R. 307; 197 Fed. 180.

In re Fite (W. D. Pa.), 31 Am. B. R. 308.

In re Freedman (D. C. Pa.), 31 Am. B. R. 53.

May be ordered when property is covered by invalid mortgage.

In re Manistee Watch Co., 28 Am. B. R. 316; 197 Fed. 455.

Provision should be made for protection of rights of lienors.

Carroll and Bro. Co. v. Young, 9 Am. B. R. 643; 119 Fed. 576. In re Saxton Furnace Co., 14 Am. B. R. 483; 136 Fed. 697.

In re Goldsmith, 9 Am. B. R. 419, 424; 118 Fed. 763.

In re Shoe and Leather Reporter (C. C. A. 1st Cir.), 12 Am. B. R. 248; 129 Fed. 588; 64 C. C. A. 156. In re Prince and Walter, 12 Am. B. R. 675; 131 Fed. 546. Mills v. Virginia-Carolina Lumber Co. (C. C. A. 4th Cir.), 20 Am. B. R. 750; 164 Fed. 168; 90 C. C. A. 154; *modif'g* In re Franklin, 18 Am. B. R. 218; 151 Fed. 642.

**May be ordered by referee.**

In re Waterloo Organ Co., 9 Am. B. R. 427; 118 Fed. 904.

In re Wilka (*supra*).

In re Miner's Brewing Co. (D. C. Pa.), 20 Am. B. R. 717; 162 Fed. 327.

In re Sanborn, 3 Am. B. R. 54; 96 Fed. 507.

Notice.

In re Progressive Wall Paper Corporation (D. C. N. Y.), 35 Am. B. R. 508; 222 Fed. 87.

Referee may also determine validity, extent, and relative priority of the claims.  
In re Miner's Brewing Co. (*supra*).

Court having custody of the property sold may determine priorities of conflicting claims. *Chauncey v. Dyke Bros.* (C. C. A. 8th Cir.), 9 Am. B. R. 444; 119 Fed. 1; 55 C. C. A. 579.

In re Martin (C. C. A. 3d Cir.), 32 Am. B. R. 29; 210 Fed. 620; 127 C. C. A. 256.  
Bankruptcy Court need not determine either validity or amount of lien.

In re Littlefield (C. C. A. 1st Cir.) (*supra*).

In re Vogt (D. C. N. Y.), 20 Am. B. R. 457; 163 Fed. 551.

Mortgagees entitled to interest.

*Coder v. Arts* (C. C. A. 8th Cir.), 18 Am. B. R. 513; 152 Fed. 943; 82 C. C. A. 91; mod'g 16 Am. B. R. 583; 145 Fed. 202; aff'd, 22 Am. B. R. 1; 213 U. S. 223; 53 L. Ed. 772.

Even though mortgagee does not prove claim in bankruptcy proceedings.

In re Stevens, 23 Am. B. R. 239; 173 Fed. 842.

**Should be on notice to all lienors.**

Personal service, rather than by mail.

In re Platteville etc. Co., 17 Am. B. R. 291; 147 Fed. 828.

In re Saxton Furnace Co. (*supra*).

In re New England Piano Co. (*supra*).

In re Kohl-Hepp Brick Co. (C. C. A. 2d Cir.), 23 Am. B. R. 822; 176 Fed. 340; 100 C. C. A. 260.

Notice to the trustee in a mortgage sufficient to give jurisdiction over holders of bonds secured.

*Equitable Trust Co. v. Vanderbilt Realty Improvement Co.*, 31 Am. B. R. 834; 155 App. Div. (N. Y.) 723; 140 N. Y. Supp. 1008.

Stockholders not entitled to notice.

In re Witherbee, 30 Am. B. R. 314; 202 Fed. 896.

As to what constitutes an affirmation of the sale by lienor.

In re Platteville Foundry and Machine Co. (*supra*).

In re Torchia (C. C. A. 3d Cir.), 26 Am. B. R. 579; 188 Fed. 207; 110 C. C. A. 248; dist'g In re Vulcan Foundry and Machine Co. (C. C. A. 3d Cir.), 24 Am. B. R. 825; 180 Fed. 671; 103 C. C. A. 637.

Liability of lienors for costs and expenses.

In re New York and Philadelphia Package Co. (D. C. N. J.), 35 Am. B. R. 94; 225 Fed. 219.

In re Elmore Cotton Mills, 33 Am. B. R. 426; 217 Fed. 810.

As to costs and expenses of such sale, see, In re Williams Estate (C. C. A. 9th Cir.), 19 Am. B. R. 389; 156 Fed. 934; 84 C. C. A. 434.

In re Chambersburg Silk Mfg. Co. (D. C. Pa.), 26 Am. B. R. 107; 190 Fed. 411.

In re Clark Coal and Coke Co., 23 Am. B. R. 273; 173 Fed. 658.

See, In re Foster (D. C. Vt.), 25 Am. B. R. 96; 181 Fed. 703.

Payment of referee's, trustee's and attorney's fees.

In re Torchia (D. C. Pa.), 26 Am. B. R. 189; 185 Fed. 576; rev'd in part, s. c. (*supra*).

See, on Louisiana rule.

In re Stewart, 27 Am. B. R. 529; 193 Fed. 791.

**Dower rights in sale free from liens.**

*Savage v. Savage* (C. C. A. 4th Cir.), 15 Am. B. R. 599; 141 Fed. 346; 72 C. C. A. 494.

In re McKenzie (C. C. A. 8th Cir.), 15 Am. B. R. 679; 142 Fed. 333; 73 C. C. A. 483; aff'g, 13 Am. B. R. 227; 132 Fed. 114.

In re Shaeffer, 5 Am. B. R. 248; 105 Fed. 352.

In re Forbes, 7 Am. B. R. 42.

In re Acritelli (D. C. N. Y.), 21 Am. B. R. 537; 173 Fed. 121.

**Pennsylvania Law** — not allowed.

In re Friedman, 29 Am. B. R. 135.

In re Chotiner, 32 Am. B. R. 760; 216 Fed. 916.

In re Codori, 30 Am. B. R. 453; 207 Fed. 784.

In re Friedman, 31 Am. B. R. 53.

Effect on taxes.

In re Keller, 6 Am. B. R. 351; 109 Fed. 131.

In re Clark Coal and Coke Co. (D. C. Pa.), 22 Am. B. R. 843; rev'd in part, s. c.

23 Am. B. R. 273; 173 Fed. 658.

Right of judgment creditor whose lien is unaffected.

In re Vastbinder, 13 Am. B. R. 148; 132 Fed. 718.

Priorities in proceeds.

In re Yoke Vitriified Brick Co. (D. C. Kan.), 25 Am. B. R. 18; 180 Fed. 235.

In re Miners Brewing Co., 20 Am. B. R. 717; 162 Fed. 327.

In re Sanderlin, 6 Am. B. R. 384; 109 Fed. 857.

## FORM No. 251.

### PETITION TO CONFIRM SALE.

United States District Court,

for the ..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

To the Hon....., District Judge.

The petition of ....., respectfully shows:

That your petitioner is the receiver herein, duly qualified and acting.

That on ....., 19.., by order of this court, the property and effects of the said bankrupt at ..... St., City of .....  
....., consisting of ....., were offered for sale at public auction.

That the same was offered in bulk at the beginning of such sale and a bid of \$..... was made for the same, and that the goods were then offered

for sale in separate lots according to catalogue, and realized the sum of \$..... or more than the bid in bulk.

That the said sum of \$..... realized, is below 75% of the appraised value of the property, which is \$..... and in order to deliver said property to the purchasers, it is necessary for your petitioner to procure an order confirming said sale.

Your petitioner is of the opinion and verily believes that a larger sum than as above stated cannot be obtained, as the sale was largely attended and fairly conducted, and advises that the said goods be delivered to the respective bidders, for the reason that said merchandise will rapidly deteriorate in value, and the expense attendant upon storing the goods for a longer time, or of a resale, would be considerable, and unlikely to produce better results, and petitioner verily believes that the sale should be confirmed.

Wherefore, your petitioner respectfully prays that an order be made confirming the said sale, and authorizing him to deliver the said merchandise as sold in lots to the respective highest bidders therefor and for such other and further relief as to the court may seem just and proper.

.....,  
*Petitioner.*

[Verification.]

# FORM No. 252.

## ORDER CONFIRMING SALE.

At a Stated Term of the United States  
District Court, held in and for the.....  
District of ....., at the Court House  
in the City of ....., on the  
..... day of ....., 19..

PRESENT:

Hon.....,  
*District Judge.*

IN THE MATTER  
OF

No.....

.....  
*Bankrupt.*

On reading and filing the petition of ....., receiver herein,  
verified ....., 19.., praying for confirmation of a sale held

pursuant to order of this Court on the ..... day of ....., 19.., and it appearing that the application made therein is reasonable and proper,

Now, on motion of ....., attorney for said petitioner, it is

Ordered, that the sale at auction conducted by the receiver herein on the ..... day of ....., 19.., be and the same hereby is in all respects confirmed and ratified, and the said receiver is hereby authorized to deliver the property to the respective highest bidders therefor in accordance with the terms of said sale.

.....,  
D. J.

#### NOTES.

##### **Petition and order to confirm sale. 70-b.**

Usually obtained *ex parte*.

Confirmation within the discretion of court and ordinarily not refused when sale has been properly conducted.

*In re Mitchell*, 15 Am. B. R. 735.

*In re Ketterer Mfg. Co.* (D. C. Pa.), 19 Am. B. R. 638; 156 Fed. 719.

*In re Throckmorton* (C. C. A. 6th Cir.), 17 Am. B. R. 856; 149 Fed. 145; 79 C. A. 15.

*In re Kronrot*, 25 Am. B. R. 738; 183 Fed. 653.

Creditors not entitled to notice of confirmation has been held in New York.

*In re Nevada-Utah Corporation* (D. C. N. Y.), 28 Am. B. R. 409; 198 Fed. 497.

Sale not invalid because bankrupt is purchaser.

*In re National Mining Exploration Co.* (D. C. Mass.), 27 Am. B. R. 92; 193 Fed. 232.

Referee after adjudication has power to confirm.

*In re Matthews*, 6 Am. B. R. 96; 109 Fed. 603.

*In re Fisher and Co.*, 14 Am. B. R. 366; 135 Fed. 223.

*In re Styer*, 3 Am. B. R. 424; 98 Fed. 290.

Effect of confirmation.

*In re Burr Mfg. and Supply Co.* (C. C. A. 2d Cir.), 32 Am. B. R. 708; 217 Fed. 16; 133 C. C. A. 126; *rev'g*, s. c. 32 Am. B. R. 686; 209 Fed. 138.

What does not constitute a sale.

Bankruptcy Court has no power to compel a creditor to consent to have all the bankrupt estate transferred to a corporation and accept in settlement of his claim, obligations of the new corporation payable at a future date.

*In re J. B. and J. M. Cornell Co.* (D. C. N. Y.), 26 Am. B. R. 252; 186 Fed. 859. Compare on power of court to enforce a plan of reorganization without assent of all creditors.

*In re Northampton Portland Cement Co.*, 25 Am. B. R. 565; 185 Fed. 542.

Setting aside a sale is equivalent to a refusal to confirm.

*In re Shea* (C. C. A. 1st Cir.), 11 Am. B. R. 207; 126 Fed. 153; 61 C. C. A. 219; *aff'g*, s.c. 10 Am. B. R. 481; 122 Fed. 742.



FORM No. 253.

NOTICE OF TAXATION OF AUCTIONEER'S CHARGES.

United States District Court,  
 ..... District of .....  
 In Bankruptcy.

<p style="text-align: center;">IN THE MATTER OF</p> <p>.....  <i>Bankrupt.</i></p>	}	No.....
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Please take notice that the trustee herein, having filed objections to the fees and charges of the auctioneer on the sale of the property of the above named bankrupt, there will be a hearing on same before ....., Esq., referee, at his office at ....., on ..... the ..... day of ....., 19.., at ..... o'clock in the .....noon, or as soon thereafter as counsel can be heard, at which hearing the fees and charges of the auctioneer will be taxed by the said referee, and such other business will be transacted thereat as may be proper.

Dated ....., 19...

.....,  
*Attorney for ....., Trustee.*

To  
 ..... Esq.,  
 (United States) Auctioneer,  
 .....  
 .....

FORM No. 254.

ORDER FOR RESALE ON DEFAULT OF PURCHASER.

United States District Court,  
..... District of .....  
In Bankruptcy.

IN THE MATTER OF ..... <i>Bankrupt.</i>	No.....
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..... the trustee of the estate of the above named bankrupt, having filed in the office of the referee a petition duly verified the ..... day of ....., 19.., alleging, among other things, that at a sale at public auction held in the ..... of ....., on the ..... day of ....., 19.., certain property belonging to the bankrupt estate herein at ....., and consisting of ....., was duly sold to ..... for \$.....: that the said ..... at time of purchase paid to the auctioneer on said sale ..... per cent. of his said bid, amounting to \$..... and agreed to pay the balance, \$....., on or before ....., 19.., and that the said ..... has failed to carry out his said agreement and pay the balance of said purchase price, although the said payment has been demanded of him and that his time to complete his said purchase has long since expired, and praying that the property be resold for the account of said ..... and that said ..... be charged with any deficit that might result from such resale and any expenses incurred by the trustee in maintaining and protecting the said property from the date of said sale to the date of such resale, and on reading and filing proof of due service upon said ....., of a notice of hearing on the said petition, and after hearing ....., of counsel for the trustee, in support of said petition and no one appearing in opposition thereto, (or after hearing ..... in opposition thereto)

Now, on motion of ....., attorney for the said trustee, it is

Ordered, that the property heretofore sold on ....., 19.., to said ....., consisting of [Here describe property fully] be and the same hereby is directed to be resold for the account of the said ....., in the manner and form as heretofore ordered.

It is further ordered, that due notice of said resale be given to the creditors herein and to the said ....., and

It is further ordered, that said ..... be and he is hereby charged with any deficit that may result to the trustee on such resale and any expense incurred by the trustee in maintaining and protecting the said property from ....., 19.., the date of the said sale, to the date of such resale, and for such resale.

Dated ....., 19...

.....

*Referee in Bankruptcy.*

NOTES.

**Resale.**

Snyder v. Bougher, 16 Am. B. R. 793; 214 Pa. St. 453; 63 Atl. 893.

**Expenses of resale.**—In re Fisher and Co., 17 Am. B. R. 404; 148 Fed. 907; aff'd, In re Wylie et al., 18 Am. B. R. 503; 153 Fed. 281; 82 C. C. A. 411.

**FORM No. 255.**

**PETITION TO VACATE SALE.**

District Court of the United States,

..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

To the District Court of the United States,

for the ..... District of .....

The petition of ..... respectfully shows and alleges.

1. That he is a creditor herein having a provable claim to the amount of \$.....

2. That on the ..... day of ....., 19.., at No..... Street, in the City of ....., the trustee herein offered for sale the property of this estate consisting of ..... in the following manner:

[Here allege particulars of sale.]

3. Your petitioner further alleges that said sale was utterly irregular, fraudulent and void as conducted by ..... for the following reasons: .....

4. That as a result of the fraudulent acts and irregular procedure as above set forth the property was sold at a grossly inadequate price.

5. That the purchaser above named is about to remove said property from the premises and if permitted so to do it will be to the great loss and detriment of this estate and be an injustice to the creditors thereof.

6. That petitioner annexes hereto and makes a part of this application an affidavit of ..... duly verified, as to the matters of fact herein set forth and specified.

7. That petitioner's sources of information and grounds of his belief are as follows: .....

8. That no previous application has been made for the order herein.

Wherefore, your petitioner prays for an order vacating and setting aside the sale of the property belonging to this estate held on the ..... day of ....., 19.., and directing that same be resold in the manner and at the time as may be prescribed by this Court and that an order to show cause issue herein directed to ..... and .....; that all proceedings on the part of said persons relative to said sale be stayed pending the hearing and determination of said order to show cause and for such other and further relief as to this Court shall seem just and proper.

.....,

*Petitioner.*

[Verification.]

## FORM No. 256.

**ORDER TO SHOW CAUSE WHY SALE SHOULD NOT BE VACATED.**

United States District Court,  
for the ..... District of .....  
In Bankruptcy.

IN THE MATTER  
OF

No.....

.....  
*Bankrupt.*

Upon the annexed petition of ....., verified ....., 19..., the annexed affidavit of ....., sworn to ....., 19..., the testimony of ..... and ....., heretofore taken before ....., Esq., as special commissioner pursuant to order of Hon. ...., District Judge, dated ....., 19..., on file in the office of the clerk of this court, together with the minutes and exhibits thereto annexed.

I do hereby order and require, ..... and ....., and each of them, to show cause before this court at a stated term thereof, to be held at the United States Court, in the City of ....., on ....., 19., at .... o'clock in the ....noon at the opening of court, or as soon thereafter as counsel can be heard, why the sale of the property, assets and effects of the above named bankrupt held by the ..... herein at ....., on the ..... day of ....., 19..., should not be vacated and set aside and the property restored to the trust estate, and for such other and further relief as may be just and proper,

And sufficient reason appearing therefor,

I do hereby order, that this order to show cause and the annexed petition of ....., and the annexed affidavit of ....., be served on the said ..... and ....., or their attorneys herein, on or before ....., 19., and that such service be sufficient notice, and pending the hearing and determination of this order to



show cause that all proceedings on the part of the ..... and .....  
 ..... herein relative to said sale be stayed.

Dated ....., 19...

.....,

*D. J.*

#### NOTES.

##### When set aside.

Gross inadequacy of price or fraud.

In re Ethier, 9 Am. B. R. 160; 118 Fed. 107.

In re Thompson, 2 Am. B. R. 216.

In re Groves, 2 N. B. N. Rep. 30.

In re Burr Mfg. and Supply Co. (C. C. A. 2d Cir.), 32 Am. B. R. 708; 217 Fed. 16;  
 133 C. C. A. 126; rev'g, s. c. 32 Am. B. R. 686.

Trustee purchaser at own sale.

In re Hawley, 9 Am. B. R. 61; 117 Fed. 364.

Allgair v. W. F. Fisher and Co., 16 Am. B. R. 278; 143 Fed. 962.

Purchase by an official appraiser not permitted.

In re Frazin and Oppenheim (C. C. A. 2d Cir.), 24 Am. B. R. 598; 181 Fed. 307;  
 104 C. C. A. 529.

##### When not set aside.

In re Shapiro, 19 Am. B. R. 125; 154 Fed. 673.

In re Belden, 9 Am. B. R. 679; 120 Fed. 524.

In re Throckmorton (C. C. A. 6th Cir.), 17 Am. B. R. 856; 149 Fed. 145; 79 C. C. A.  
 15; Sturgiss v. Corbin (C. C. A. 4th Cir.), 15 Am. B. R. 543; 141 Fed. 1; 72 C. C. A.  
 179. Owens v. Bruce (C. C. A. 4th Cir.), 6 Am. B. R. 322; 109 Fed. 72; 48 C. C. A.  
 239.

Schuler v. Hassinger (C. C. A. 5th Cir.), 24 Am. B. R. 184; 177 Fed. 119; 100 C. C.  
 A. 539.

In re Kronrot (D. C. N. Y.), 25 Am. B. R. 738; 183 Fed. 653.

In re Charles Knosher and Co. (C. C. A. 9th Cir.), 28 Am. B. R. 747; 197 Fed. 136;  
 116 C. C. A. 560.

Mere inadequacy of price not sufficient.

In re Metallic Specialty Mfg. Co. (D. C. Pa.), 27 Am. B. R. 408; 193 Fed. 300.

Ballentyne v. Smith, 205 U. S. 285; 27 Sup. Ct. 527; 51 L. Ed. 803.

In re National Mining Exploration Co., 27 Am. B. R. 92; 193 Fed. 232.

In re Milne Mfg. Co. (D. C. N. Y.), 21 Am. B. R. 468.

Not set aside on review unless there has been an abuse of power in court below.

In re Shea (C. C. A. 1st Cir.), 11 Am. B. R. 207; 126 Fed. 153; 61 C. C. A. 219;  
 aff'g, s. c. 10 Am. B. R. 481; 122 Fed. 742.

Schuler v. Hassinger (*supra*).

**FORM No. 257.**

**ORDER VACATING SALE.**

At a Stated Term of the District Court  
of the United States for the .....  
District of ..... held at the Court  
House, City of ....., on the  
..... day of ....., 19..

PRESENT:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

....., a creditor of the above named bankrupt having filed  
a petition herein, verified the ..... day of ....., 19.., praying  
that the sale of the property of this estate held by ..... on  
the ..... day of ....., 19.., be vacated and set aside for  
....., as set forth in said petition, and for an order for the resale  
of same and an order to show cause having been issued thereon and the same  
having duly come on to be heard, now upon reading and filing the petition of  
....., verified the ..... day of ....., 19.., the affidavit  
of ....., duly verified and the answering affidavit of .....  
duly verified and upon all the proceedings heretofore had herein and after  
hearing ....., Esq., in support of the motion and .....  
....., Esq., in opposition thereto and due deliberation having  
been had, it is on motion of ....., attorney for petitioner,

Ordered, that the sale of the property herein held on the ..... day of  
....., 19.., be vacated and set aside and that .....  
the alleged purchaser of same return said property forthwith to this estate and  
it is further

Ordered, that same be resold by the trustee as speedily as may be pursuant  
to the rules of this Court.

.....,

*D. J.*

# PART VIII.

## INJUNCTIONS AND RESTRAINING ORDERS.

- FORM No. 258. Petition for an Injunction other than against Suits.  
 259. Order to show Cause for an Injunction.  
 260. Injunction Order.  
 261. Order staying Suit.  
 262. Affidavit by Bankrupt to stay Supplementary Proceedings.  
 263. Affidavit to stay Sale by Trustee of mortgaged Property and to modify Injunction.  
 264. Petition to modify Injunction.  
 265. Order vacating Stay.

### FORM No. 258.

#### PETITION FOR AN INJUNCTION OTHER THAN AGAINST SUITS.

United States District Court,  
 for the ..... District of .....:  
 In Bankruptcy.

<div style="border: 1px solid black; padding: 10px; margin-bottom: 10px;"> <p>IN THE MATTER</p> <p>OF</p> <p>.....</p> <p style="text-align: right;"><i>Bankrupt.</i></p> </div>	<p style="font-size: 2em;">}</p>	<p>No. ....</p>
--	----------------------------------	-----------------

To the District Court of the United States for the  
 ..... District of .....:

The petition of ....., respectfully shows and alleges:

1. That he is the ..... herein duly qualified and acting.  
 2. That the above named bankrupt was duly adjudged herein on the ....  
 day of ....., 19.., and, thereafter, the following proceedings  
 were had: .....

3. That ..... of ..... by virtue of an alleged  
 ..... has taken possession of the following property belong-  
 ing to this estate: .....

That the claim to the possession of said property is merely colorable, and is fraudulent and void for the following reasons: .....

That the said ..... is removing and endeavoring to dispose of said property and convert same into cash.

4. That, unless the injunction hereinafter asked is granted, your petitioner and the creditors of said bankrupt will suffer irreparable injury and loss.

5. That no previous application has been made for the order hereinafter asked.

Wherefore, your petitioner prays for a writ of injunction herein, enjoining and restraining the said ....., his attorneys, agents and servants, from disposing of said property or in any way removing or interfering with same, until further order of this court in the premises, and for such other relief as shall be just and lawful.

Dated ....., 19...

.....,

*Petitioner.*

[Verification.]

### FORM No. 259.

#### ORDER TO SHOW CAUSE FOR AN INJUNCTION BY TRUSTEE.

United States District Court,

for the ..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

On reading the petition of ..... the trustee herein, verified ....., 19... and upon all the proceedings had herein and on motion of ....., attorney for the said trustee, it is

Ordered, that ..... show cause at a Stated Term of this court appointed to be held at the United States Court House in the City of ..... on ..... the ..... day of ....., 19..., at .... o'clock in the .... noon of that day, or as soon thereafter as counsel can be heard, why he should not be stayed, enjoined and restrained from

removing, disturbing or disposing of the following property: (Here enumerate acts) .....

.....  
and from interfering with or disturbing ....., the trustee herein,  
in any other way in his possession of the assets of the said bankrupt: and it  
is further

Ordered, that until the determination of this order to show cause the said  
....., his attorneys, agents and employees are stayed,  
enjoined and restrained from removing, disturbing or disposing of .....

.....  
or otherwise interfering with or disturbing the said trustee in his possession  
of the assets herein; and it is further

Ordered, that service on or before ....., 19..., of a certified  
copy of this order, together with copy of the petition, on the said .....  
....., shall be sufficient.

Dated ....., 19...

.....,  
D. J.

### FORM No. 260.

#### INJUNCTION ORDER.

At a Stated Term of the District Court  
of the United States for the .....  
District of ....., held at the Court  
House, City of ....., on the ....  
day of ....., 19..

PRESENT:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

No. ....

*Bankrupt.*

....., having made an application to this court by duly  
verified petition, praying that ....., of ....., be  
enjoined and restrained from .....  
.....,



and an order to show cause having been issued thereon directed to the said ....., and returnable on the ..... day of ....., 19..., and the said order to show cause having come on to be heard,

Now, upon reading and filing the petition of ....., verified the ..... day of ....., 19..., and the affidavit of ....., verified the ..... day of ....., 19..., and all the proceedings herein, and after hearing ....., attorney for ....., in support of said application and ....., attorney for ....., in opposition thereto, and due deliberation having been had, it is, upon motion of ....., attorney for .....,

Ordered, that ....., his agents, attorneys and servants be and they hereby are restrained and enjoined from etc. [Here specify particulars] ..... until further order of this court in the premises.

D. J.

#### NOTES.

**Restraining orders. Secs. 2 (15), 11-a.**

**General Order XII (3).**

**Jurisdiction.**—Injunction and stays often incorporated in order appointing a receiver or in other order.

Application should usually be made to the judge, though referee has power within limitations of General Order XII (3). And when local rule confers power.

Process should be confined to the parties litigant, not extended to State court or judges on principles of comity.

**When power will be exercised.**

*In re Hicks*, 13 Am. B. R. 654; 133 Fed. 739.

*In re Home Discount Co.*, 17 Am. B. R. 168; 147 Fed. 538.

Stay proceedings in State court against insolvent corporation.

*New River Coal Land Co. v. Ruffner Bros.* (C. C. A. 4th Cir.), 20 Am. B. R. 100; 165 Fed. 881; 91 C. C. A. 559.

*In re Swofford Bros. Dry Goods Co.* (D. C. Mo.), 25 Am. B. R. 282; 180 Fed. 549.

Restrain assignee in State court from disposing of or interfering with the assigned property.

*In re Gutwillig* (C. C. A. 2d Cir.), 1 Am. B. R. 388; 92 Fed. 337; aff'g, s. c. 1 Am. B. R. 78.

*Davis v. Bohle et al.* (C. C. A. 8th Cir.), 1 Am. B. R. 412; 92 Fed. 325.

Landlord, who upon notice makes no claim before referee for use and occupation against estate, may be restrained by Bankruptcy Court from attempting to collect by suit.

*In re Empire Construction Co.* (D. C. N. Y.), 19 Am. B. R. 704; 157 Fed. 495.

Jurisdiction to enjoin any proceeding intended to take specific property out of the hands of the trustee.

*In re Schermerhorn* (C. C. A. 8th Cir.), 16 Am. B. R. 507; 145 Fed. 341; 76 C. C. A. 215.

Protect bankrupt from arrest while attending court or engaged in performance of a statutory duty.

*In re Adler* (C. C. A. 2d Cir.), 16 Am. B. R. 414; 144 Fed. 659; 75 C. C. A. 461.

In re Dresser (D. C. N. Y.), 10 Am. B. R. 270; 124 Fed. 915.

Restrain a sale of bankrupt's property in certain cases.

In re Jersey Island Packing Co. (C. C. A. 9th Cir.), 14 Am. B. R. 689; 138 Fed. 625;  
71 C. C. A. 75.

In re Vastbinder (D. C. Pa.), 13 Am. B. R. 148; 132 Fed. 718.

#### Foreclosure suits.

When power may be exercised.

In re Donnelly (D. C. O.), 26 Am. B. R. 304; 188 Fed. 1001; and cases cited in opinion.

In re Dana (C. C. A. 8th Cir.), 21 Am. B. R. 683; 167 Fed. 529; 93 C. C. A. 238.

Pugh v. Loisel (C. C. A. 5th Cir.), 33 Am. B. R. 580; 219 Fed. 417; 135 C. C. A. 221.

In re Neely, 108 Fed. 31.

In re Morse (D. C. N. Y.), 32 Am. B. R. 207; 210 Fed. 900.

When power may not be exercised in foreclosure suits.

In re Rohrer (C. C. A. 6th Cir.), 24 Am. B. R. 52; 177 Fed. 381; 100 C. C. A. 613.

In re Wagner (D. C. Pa.), 30 Am. B. R. 396; 206 Fed. 364.

Sale of real estate under judgment of foreclosure prior to four months' period.

Sample v. Beasley (C. C. A. 5th Cir.), 20 Am. B. R. 164; 158 Fed. 607; 85 C. C. A. 429.

In re Schmidt (D. C. N. J.), 35 Am. B. R. 1; 224 Fed. 814.

See, Collier (10th Ed.), p. 66.

#### When stay will not be granted.

May not restrain a sale by pledgee under valid pledge and pursuant to its terms.

In re Mayer, etc., 19 Am. B. R. 356; 156 Fed. 432.

Hiscock v. Varick Bank, 18 Am. B. R. 1; 206 U. S. 28; 51 L. Ed. 945.

Nor action to enforce mechanic's lien.

In re Grissler (C. C. A. 2d Cir.), 13 Am. B. R. 508; 136 Fed. 754; 69 C. C. A. 406.

Sale by receiver in State court under certain conditions.

In re Sterlingworth Ry. Supply Co., 21 Am. B. R. 341; 164 Fed. 591.

Where a proceeding was commenced more than four months before filing of petition, and property in controversy was under the control and in the possession of receiver in State court, a bankruptcy court cannot enjoin the proceedings or order the property turned over to the trustee in bankruptcy.

Pickens v. Roy, 9 Am. B. R. 47; 187 U. S. 177; 47 L. Ed. 128; aff'g 5 Am. B. R. 644; 106 Fed. 663.

Does not apply to suit in State court to enforce an asserted right *in rem* under State law.

Tennessee Producer Marble Co. v. Grant, 14 Am. B. R. 288; 135 Fed. 332.

Moore v. Green (C. C. A. 4th Cir.), 16 Am. B. R. 648; 145 Fed. 480; 76 C. C. A. 250.

In re United Wireless Telegraph Co. (D. C. N. J.), 27 Am. B. R. 1; 192 Fed. 238;  
s. c. (Ex parte Hill) 28 Am. B. R. 394; 196 Fed. 153.

#### Jurisdiction against suits. Sec. 11-a. General Order XII (3).

In re Kleinhaus, 7 Am. B. R. 604; 113 Fed. 107.

In re Gutman, 8 Am. B. R. 252; 114 Fed. 1009.

In re Basch, 3 Am. B. R. 235; 97 Fed. 761.

In re Wollock, 9 Am. B. R. 685; 120 Fed. 516.

In re Mustin, 21 Am. B. R. 147; 166 Fed. 506.

In re Globe Cycle Works, 2 Am. B. R. 447.

In re Eastern Commission and Importing Co., 12 Am. B. R. 305; 129 Fed. 847.

In re Hilton, 4 Am. B. R. 774.

No extra-territorial jurisdiction.

*Acme Harvester Co. v. Beekman Lumber Co.* (U. S. Sup.), 27 Am. B. R. 262; 222 U. S. 300; 56 L. Ed. 208.

When order discretionary and not reviewable except for abuse of discretion.

In re *Guanacevi Tunnel Co.* (C. C. A. 2d Cir.), 29 Am. B. R. 229; 201 Fed. 316; 119 C. C. A. 554.

*New River Coal Land Co. v. Ruffner Bros.* (C. C. A. 4th Cir.), 21 Am. B. R. 474; 165 Fed. 881; 91 C. C. A. 559.

#### **Judgment for conversion.**

Stay granted. *Fechter v. Postel*, 17 Am. B. R. 316.

In re *Hale*, 20 Am. B. R. 633; 161 Fed. 387.

In re *Floyd, Crawford and Co.* (D. C. N. Y.), 15 Am. B. R. 277.

See, In re *J. M. Mertens and Co.* (C. C. A. 2d Cir.), 16 Am. B. R. 831; 147 Fed. 182;

77 C. C. A. 478.

Dischargeability of debt, basis of jurisdiction.

In re *Floyd, Crawford and Co.*, 15 Am. B. R. 277.

*Mackel v. Rochester*, 14 Am. B. R. 429; 135 Fed. 904. In re *Cole*, 5 Am. B. R. 780; 106 Fed. 857. In re *Sullivan*, 2 Am. B. R. 30.

In re *Butts*, 10 Am. B. R. 16; 120 Fed. 966.

*White v. Thompson* (C. C. A. 5th Cir.), 9 Am. B. R. 653; 119 Fed. 868; 56 C. C. A. 398.

In re *Lawrence*, 20 Am. B. R. 698; 163 Fed. 131. In re *New York Tunnel Co.* (C. C. A. 2d Cir.), 20 Am. B. R. 25; 159 Fed. 688; 86 C. C. A. 556.

In re *Carmelo* (D. C. N. Y.), 28 Am. B. R. 353; 195 Fed. 632.

In re *Dowie*, 29 Am. B. R. 338; 202 Fed. 816.

In re *Ennis and Stoppani* (D. C. N. Y.), 22 Am. B. R. 679; 171 Fed. 755.

In determining whether claim is dischargeable court may be guided by the pleadings.

In re *Adler* (C. C. A. 2d Cir.), 18 Am. B. R. 240; 152 Fed. 422; 81 C. C. A. 564.

*Gleason v. O'Mara* (C. C. A. 3d Cir.), 24 Am. B. R. 832; 180 Fed. 417; 103 C. C. A. 563.

When dischargeability is doubtful.

In re *Nuttall* (D. C. N. Y.), 29 Am. B. R. 800; 201 Fed. 557.

Ex parte *Butler-Kycer Co.* (Ala. Sup. Ct.), 27 Am. B. R. 419.

When lien of execution is void under Sec. 67-f upon a judgment imposing a fine.

In re *Green* (D. C. Pa.), 24 Am. B. R. 665; 179 Fed. 870.

#### **Stays in actions against receivers in individual capacity.**

See notes on Forms "Receiver in Bankruptcy."

Denied.

In re *Roberts* (C. C. A. 2nd Cir.), 22 Am. B. R. 908; 169 Fed. 1022; 94 C. C. A. 668.

Granted where claimant by his conduct had submitted himself to the Bankruptcy Court.

In re *Trayna & Cohn* (C. C. A. 2nd Cir.), 27 Am. B. R. 594; 195 Fed. 486; 115 C. C. A. 396.

#### **"Suits," broad interpretation.**

In re *Hicks* (D. C. N. Y.), 13 Am. B. R. 654; 133 Fed. 739.

#### **Duration of stay.**

If made prior to adjudication runs until after an adjudication or the dismissal of the petition.

If after adjudication the stay may be continued until, "twelve months after the date of such adjudication or if within that time such person applies for a discharge, then until the question of such discharge is determined."

In re Rosenthal, 5 Am. B. R. 799; 108 Fed. 368.

In re Flanders, 10 Am. B. R. 379; 121 Fed. 236.

In re Federal Biscuit Co. (C. C. A. 2nd Cir.), 32 Am. B. R. 612; 214 Fed. 221; 130 C. C. A. 635.

[See Rule IX, So. Dist. N. Y.]

**When to be exercised and when not.**

Southern Loan & Trust Co. v. Benbow, 3 Am. B. R. 9; 96 Fed. 514.

In re Globe Cycle Works, 2 Am. B. R. 447.

In re Mercedes Import Co. (C. C. A. 2nd Cir.), 21 Am. B. R. 590; 166 Fed. 427; 92 C. C. A. 179; rev'g s. c. 20 Am. B. R. 648.

Stay of action against bankrupt for legal services

Gleason v. Thaw (C. C. A. 3rd Cir.), 185 Fed. 345; 107 C. C. A. 463; aff'g In re Thaw, 24 Am. B. R. 759.

If property has come into the possession of the Bankruptcy Court any suit or proceeding tending to interfere with such possession may properly be stayed.

In re Tomlinson (D. C. N. Y.), 27 Am. B. R. 780; 193 Fed. 101.

Applies to both voluntary and involuntary bankruptcy.

In re Geister, 3 Am. B. R. 228; 97 Fed. 322.

Attachment suit within four months.

In re Federal Biscuit Co. (C. C. A. 2nd Cir.), 29 Am. B. R. 393; 203 Fed. 37; 121 C. C. A. 373; dist'g In re Mercedes Import Co., 21 Am. B. R. 590; 166 Fed. 427; 92 C. C. A. 179.

Includes, "Supplementary Proceedings."

In re De Long, 1 Am. B. R. 66.

In re Fortunato, 9 Am. B. R. 630; 123 Fed. 622. In re De Lany & Co., 10 Am. B. R. 634; 124 Fed. 280. In re Burke, 19 Am. B. R. 51; 155 Fed. 703. In re Kletchka, 1 Am. B. R. 479; 92 Fed. 901.

Stay of supplementary proceedings under judgment not dischargeable in bankruptcy will not be granted except in so far as such proceedings interfere with the due administration under the Bankruptcy Act.

In re Munro, 28 Am. B. R. 369; 195 Fed. 817.

May be granted to stay execution to reach bankrupt's salary under section 1391, Code of Civil Procedure (N. Y.), until question of discharge is determined.

In re Van Buren (D. C. N. Y.), 20 Am. B. R. 896; 164 Fed. 883.

In re Harrington (D. C. N. Y.), 29 Am. B. R. 666; 200 Fed. 1010.

In re Sims, 23 Am. B. R. 899; 176 Fed. 645; apparently overruling In re Driggs, 22 Am. B. R. 621; 171 Fed. 897.

**Should not be granted in suits upon non-dischargeable claims.**

Mackel v. Rochester, 14 Am. B. R. 429; 135 Fed. 904. Action for deceit. Tindle v. Birkett, 18 Am. B. R. 121; 205 U. S. 183; 51 L. Ed. 762; aff'g 15 Am. B. R. 179. In re Lawrence, 20 Am. B. R. 698; 163 Fed. 131.

In re Clipper Mfg. Co. (C. C. A. 2nd Cir.), 24 Am. B. R. 683; 179 Fed. 843; 103 C. C. A. 260.

Nor judgment creditor's suit begun more than four months before bankruptcy.

Metcalf v. Barker, 9 Am. B. R. 36; 187 U. S. 165; 47 L. Ed. 122; rev'g In re Lesser Bros. (C. C. A. 2nd Cir.), 5 Am. B. R. 320.

A replevin creditor. In re Russell (C. C. A. 2nd Cir.), 3 Am. B. R. 658; 101 Fed. 248; 41 C. C. A. 323.

A fine imposed by a State court for contempt is not a dischargeable debt and a court of bankruptcy will not stay proceedings against the bankrupt for its enforcement.

In re Koronsky (C. C. A. 2nd Cir.), 21 Am. B. R. 851; 170 Fed. 719; 96 C. C. A.



**In re Hall** (D. C. N. Y.), 22 Am. B. R. 498; 170 Fed. 721.

When stay of stockholder's action denied.

**In re United Wireless Telegraph Co.**, 28 Am. B. R. 394; 196 Fed. 153.

When State court has first acquired jurisdiction.

**Hull v. Burr** (C. C. A. 1st Cir.), 30 Am. B. R. 588; 206 Fed. 1; 124 C. C. A. 135.

**Sheriff's sale on execution.**

**In re Northrop**, 1 Am. B. R. 427.

**In re Baughman** (D. C. Pa.), 15 Am. B. R. 23; 138 Fed. 742.

**Alimony.**

In Illinois, Bankruptcy Court will stay any proceeding in State court to collect alimony until question of discharge has been determined.

**In re Challoner**, 3 Am. B. R. 442; 98 Fed. 82.

**Practice.**

Application may be made to State court.

**In re Geister**, 3 Am. B. R. 228; 97 Fed. 322.

**In re Pennsylvania Development Co.** (D. C. Cal.), 33 Am. B. R. 759; 220 Fed. 222.

In making application to Federal court it matters not that the State court had previously denied a similar application by same petitioner.

**New River Coal Land Co. v. Ruffner Bros.**, 20 Am. B. R. 100; 165 Fed. 881; 91 C. C. A. 559.

Petition should show that the proceeding is pending.

**In re Goldberg**, 9 Am. B. R. 156; 117 Fed. 692.

May be verified by attorney when reasons are stated.

**In re Goldberg** (*supra*).

Notice of application not necessary.

**In re William E. Delaney & Co.**, 10 Am. B. R. 634; 124 Fed. 280.

**Stays by referees. See, General Order XII, (3).**

See Rule XXI, Northern and Western Districts of New York.

**In re Berkowitz**, 16 Am. B. R. 251; 143 Fed. 598. **In re Steuer**, 5 Am. B. R. 209, 214; 104 Fed. 976. **In re Siebert**, 13 Am. B. R., 348; 133 Fed. 781.

A mere adjudication in bankruptcy does not operate as a stay against prosecution of a claim.

**Maas v. Kuhn** (N. Y. App. Div.), 22 Am. B. R. 91; 130 App. Div. (N. Y.) 68; 114 N. Y. Supp. 444.

**Verbal notice of an injunction held sufficient.**

**In re Krinsky Bros.** (D. C. N. Y.), 7 Am. B. R. 535; 112 Fed. 972.

**Blake v. Nesbet**, 16 Am. B. R. 269; 144 Fed. 279.

**In re Wilk**, 19 Am. B. R. 178; 155 Fed. 943.



FORM No. 261.

ORDER STAYING SUIT.

At a Stated Term of the District Court  
of the United States for the .....  
District of ....., held at the  
Court House, City of ....., on  
the ..... day of .....,  
19...

Present:

Hon. ....,  
*District Judge.*

IN THE MATTER  OF  .....  <i>Bankrupt.</i>	}	No.....
--	---	---------

On reading and filing the affidavit of ....., bankrupt herein,  
verified ....., 19..., the adjudication in bankruptcy and  
all proceedings herein, and on motion of ....., attorney for the  
said bankrupt, it is

Ordered, that ....., his attorney .....,  
Esq., and all other persons be and they hereby are jointly and severally  
restrained and enjoined from proceeding with or taking any further proceed-  
ings in a certain action, now pending in the ..... Court,  
..... County, wherein the said .....  
is the plaintiff, and the bankrupt herein is the defendant, or in a proceeding  
supplementary to execution in said action, until twelve months after .....  
....., 19..., the date of the adjudication of the above named bankrupt, or  
if within that time the bankrupt above named applies for a discharge, then  
until the question of such discharge is determined.

.....,  
*D. J.*

## FORM No. 262.

**AFFIDAVIT BY BANKRUPT TO STAY SUPPLEMENTARY  
PROCEEDINGS.**

United States District Court,  
for the ..... District of .....  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No.....
---	---	---------

State of ....., }  
County of ....., } ss.:

....., being duly sworn, deposes and says:

1. That on the .... day of ....., 19.., deponent filed a voluntary petition in bankruptcy in this court and on the same day was duly adjudicated a bankrupt.

2. That prior to the filing of said petition in bankruptcy, ..... of ....., obtained a judgment against deponent in the Supreme Court of ....., ..... County, and on ..... 19.., said judgment was duly docketed. That execution was subsequently issued and returned unsatisfied. That on the .... day of ..... 19.., an order was issued in supplementary proceedings out of the ..... Court, ....., County, ordering and requiring deponent to appear for examination at (Special Term, Part II.) of said court, on the .... day of ....., 19.., and make discovery on oath concerning his property, and also enjoining deponent from transferring or making any disposition of the property belonging to him, not exempt by law from execution, or in any manner interfering therewith until further order in the premises. That said order in supplementary proceedings was obtained at the instance of the said judgment creditor.

3. That the said judgment is upon a claim in contract not founded upon fraud or false representation from which a discharge in bankruptcy would be a release; that deponent has not yet appeared for examination, nor is he in default therein. That inasmuch as deponent has been adjudicated a bankrupt herein, in which proceeding any creditor may obtain a desired examination, he

believes that the examination in supplementary proceedings at the instance of said creditor, set for ....., 19..., at ..... M., is unnecessary, and that deponent ought not to be harassed by same, and that said examination should be stayed until twelve months after the date of adjudication herein, and if within said time deponent applies for a discharge, then until the question of such discharge is determined; and that such judgment creditor, ....., and his attorney, ....., Esq., and all other persons be stayed and enjoined from taking any further or other proceedings in said action.

No previous application has been made for the order asked for herein.  
.....,  
Sworn to before me, this }  
..... day of ....., 19.. }

FORM No. 263.

AFFIDAVIT TO STAY SALE BY TRUSTEE OF MORTGAGED PROPERTY  
AND TO MODIFY INJUNCTION.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER  OF  .....  <i>Bankrupt.</i>	}	No.....
--	---	---------

State of ....., } ss.:  
County of ....., }

....., being duly sworn, deposes and says, that he is the Secretary of ..... Company. That said Company has made a motion for the modification of an injunction order herein, so as to render available its remedies under a chattel mortgage held by it against the bankrupt's estate. That the papers on said motion other than those on file herein are hereto annexed. The deponent makes said papers part of this application in the same manner as if here set out in full. That on ....., 19.... deponent received a notice of sale of the estate of the above named bankrupt including the property covered by the said mortgage, which sale is to take place on the ..... day of ....., 19.... That the ..... Company has a subsisting right to enter into the possession of the chattels covered by the said mortgage and foreclose the said mortgage. That the order

of which the ..... Company desires a modification prevents any interference with the estate of the bankrupt, and has therefore prevented the ..... Company from enforcing its remedy as against the said mortgaged chattels: that the motion to permit the ..... Company to enforce its claim is returnable on the ..... day of ....., 19..., which date is after the time for which the sale of the bankrupt's estate by the trustee is noticed to take place; that if the trustee of the said bankrupt is permitted to offer the chattels covered by the mortgage of the ..... Company for sale, the said chattels may be removed from the place in which they are now located and the remedy of ..... Company, by foreclosure or otherwise, greatly impaired, if not entirely lost; that the said chattel mortgage held by ..... Company contains a license to the mortgagee to enter into the premises and take possession of the said mortgaged property after breach of the condition of the mortgage; that if the said property is sold by the trustee on the date fixed, the ..... Company may be unable to assert its remedy of entering into possession. That the notice of the proposed sale by the trustee mentions no liens or encumbrances upon any of the chattels to be sold and does not purport to give notice of a sale of the equity of redemption merely, or of the chattels subject to the lien of the mortgage or the title of ..... Company. That the condition of the mortgage held by said Company having been broken, the title to the mortgaged chattels became and is now absolute in ..... Company subject only to a possible equity of redemption belonging to the bankrupt or his trustee. That no notice of application by the trustee for leave to make the sale has ever been given to the mortgagee, its successors or assigns, and that the proposed sale, so far as it affects chattels covered by said mortgage, is unauthorized by law and in violation of the rights and title of ..... Company. That ..... Company has not consented and does not consent to a sale by the trustee free of its title and lien, or subject thereto. That if a sale were effectually made by the trustee in one lot or in separate pieces free of said Company's claim and title, there would probably arise a large deficit and the rights of the Company would be greatly impaired. That if a sale were effectually made subject to the interest of ..... Company, the value of the mortgaged chattels would be greatly depreciated, and in deponent's judgment the chattels would be rendered unsalable, and if removed from the premises by separate purchasers the remedy of ..... Company would be greatly impaired if not wholly destroyed.

Deponent therefore applies for an order of this court restraining and enjoining ..... Esq., trustee herein of the said bankrupt, his attorneys, agents or servants, from selling any of the property of the said bankrupt mentioned in the said mortgage held by ..... Company and on the premises of the said bankrupt.

Sworn to before me, this }  
 ..... day of ..... 19.. }

.....,



## FORM No. 264.

## PETITION TO MODIFY INJUNCTION.

United States District Court,  
for the ..... District of .....  
In Bankruptcy.

IN THE MATTER

OF

No.....

.....  
*Bankrupt.*

To the Honorable Judge of the District Court of the United States for the  
..... District of .....

The petition of ..... respectfully shows:

1. That on or about the .... day of ....., 19.., your petitioner  
....., being then the owner in fee of certain parcels of land in  
the City of ....., with the buildings thereon, known as No. ....  
....., Street, duly leased the said premises by an instrument in writing  
to ....., the bankrupt herein, for a term of .... years, at the  
yearly rent of ..... dollars (\$....) to be paid in equal monthly pay-  
ments in advance on the first day of each month in the said term, which the  
said lessee, ....., in and by said lease agreed to pay, and the  
said ..... in and by said lease also agreed, as additional rent for the  
said premises, to bear, pay and discharge all taxes and assessments of every  
nature and kind which might during said demised term be assessed, levied,  
confirmed or imposed upon said premises, or any part thereof, and also all  
such taxes, rents or charges as should during such demised term be charged,  
levied or imposed upon said premises, or any part thereof, whether  
such rents or charges constitute liens upon the real estate or not, and that  
the payment of each and every tax and assessment assessed, confirmed, levied  
or imposed upon said demised premises should be made to the proper officer  
constituted by law to receive the same within thirty days after the date when  
such payment would be received by such officer, and that if any such taxes  
or assessments should not have been paid within the time so provided, that the  
said lessor might himself pay the same, together with any interest or penalty  
that might have accrued thereon, and that the amount so paid by said lessor



should become due and be payable by the said lessee with the next monthly, or any other subsequent instalment of said rent which should become due after such default on the part of the said lessor.

2. That the said ..... duly entered into the occupation of the said demised premises under the said lease and still remains in the occupation thereof, except as hereinafter stated.

3. That on the first day of ....., 19.., there was due to your petitioner under and by virtue of said lease, the sum of ..... dollars (\$....), being the monthly instalment of the said annual rent of ..... dollars (\$....) which fell due on the said first day of ....., 19.., for the month of ....., 19.., and the further sum of ..... dollars, additional rent, being the regular annual tax imposed or levied upon the said premises for the year 19.., which the said ....., failed to pay as provided in and by the said lease, and which your petitioner himself paid, as provided in said lease, as hereinabove stated and which sum by the terms of the said lease accordingly fell due to your petitioner from the said ..... on the .... day of ....., 19....

4. That payment of the said sums so due and payable has been duly demanded since the same became due; that no part thereof has been paid and your petitioner, being still the owner in fee of the said premises, desires to institute proceedings under the laws of the State of ..... to dispossess the said ..... and all his under-tenants and each and every person in possession of the said premises or claiming possession thereof by or through the said ....., or his under-tenants, assigns, legal representatives or otherwise, which proceedings it is proposed to institute in the ..... Court of the City of ....., where the said premises are situated.

5. That your petitioner is informed and believes that on or about the .... day of ....., 19.., ....., Esq., was appointed herein receiver of the entire assets, estate, property and business of the said bankrupt, ....., and that in and by the order appointing the said ..... such receiver, said receiver was directed to take immediate possession of such assets, and all persons were thereby restrained from interfering with the control and possession of the said estate by the said receiver in any manner whatsoever; that, as your petitioner is informed and believes, the said receiver, assuming to act under the said order, is now in possession as such receiver of the said premises covered by the lease hereinabove described, and your petitioner is advised by counsel that the said receiver, and any trustee in bankruptcy of the said ....., who may hereafter be elected or appointed herein during the pendency of said dispossess proceedings, are necessary parties to said dispossess proceedings, and that before instituting such dispossess proceedings, it is necessary for your petitioner to obtain an order from this Honorable Court granting leave to him to make such receiver and trustee parties to such dispossess proceedings and modifying the injunc-

tion contained in said order of ....., 19.., for the purpose of enabling dispossess proceedings to be brought and executed.

Wherefore, petitioner prays that an order be entered herein authorizing and permitting him to institute and prosecute such dispossess proceedings, with leave to make the said receiver and any trustee in bankruptcy of the said ....., who may hereafter be appointed or elected herein during the pendency of such dispossess proceedings, parties thereto, and modifying the injunction contained in the order of ....., ....., 19.., herein, by permitting the institution and prosecution of such dispossess proceedings.

And petitioner prays for such other and further relief as may be necessary in the premises.

.....,  
*Petitioner.*

.....,  
Attorney for Petitioner.  
(Verification.)

**FORM No. 265.****ORDER VACATING STAY AND PERMITTING JUDGMENT AGAINST  
BANKRUPT.**

At a Stated Term of the District Court  
of the United States, held in and for the  
..... District of .....,  
at the Court House in the City of .....  
....., on the ..... day of  
....., 19...

Present:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

.....  
*Bankrupt.*

On the ..... day of ....., 19..., an order to show cause having been issued in the above entitled proceeding, and in the above Court, why an order should not be made and entered, restraining and enjoining ....., his attorneys, agents and servants and each and all of them from taking any further steps or proceedings of any kind or character whatsoever in a certain action pending in the ..... Court of the State of ....., ..... County, in which action ..... the bankrupt herein is plaintiff and ..... is the defendant, and from moving to confirm any report of the Hon. ...., referee, and from entering any judgment against ....., the bankrupt herein, in the said action and

Whereas, it appears from the facts contained in the decision of the referee appointed to hear and determine this action in the ..... Court that certain notes of ..... were not contested and were conceded to have a valid consideration and it appearing also from the affidavit of ..... verified ..... on file in opposition to this order to show cause, that the decision of the referee and all the fees and disbursements of the referee and all the costs of the attorneys for the defendant were made and incurred prior to ....., the date of the referee's report which was filed and served upon the bankrupt's attorney on or about that date, and several

days prior to the application to the bankruptcy court which was granted and entered on ..... and after reading and filing the petition herein for the said order to show cause returnable before this Court on the ..... day of ....., 191..., and upon reading and filing the summons and complaint and the referee's report; the certificate of the referee as to costs: the notice of motion for judgment, and the copy of said judgment, now, on motion of ....., attorney for ..... in this Court and after hearing ....., attorney for ....., in opposition thereto, it is hereby

Ordered, adjudged and decreed, that the order of this Court made ..... .., 191..., be and the same hereby is vacated in so far as to permit ..... to take final judgment with costs in said action.

.....,

*D. J.*

## PART IX.

### DISCHARGE OF BANKRUPT.

- FORM No. 266.** Bankrupt's Petition for Discharge.
- 267. Order to show Cause thereon.
  - 268. Affidavit of mailing Petition for Discharge.
  - 269. Notice for Publication of Application for Discharge.
  - 270. Referee's Certificate on Discharge.
  - 271. Order of Discharge.
  - 272. Notice of Appearance of objecting Creditor.
  - 273. Affidavit that no Specifications have been filed.
  - 274. Specifications of Objection to Discharge.
  - 275. Exceptions to Specifications.
  - 276. Petition to amend Specifications.
  - 277. Order authorizing Trustee to file Objections.
  - 278. Order of Reference to Special Master.
  - 279. Notice of Hearing before Special Master.
  - 280. Report of Special Master upon Specifications.
  - 281. Order opening Default on Discharge Proceeding.
  - 282. Order denying Discharge upon Report of Special Master.
  - 283. Petition for Extension of Time to apply for Discharge.
  - 284. Referee's Certificate on such Application.
  - 285. Order extending Time to apply for a Discharge.
  - 286. Petition to revoke Discharge.
  - 287. Order revoking Discharge.
  - 288. Affidavit for Cancellation of a Judgment against Bankrupt. (New York Practice.)
  - 289. Order canceling Judgment. (New York Practice.)

#### FORM No. 266.

[Official.]

#### BANKRUPT'S PETITION FOR DISCHARGE.

United States District Court,  
 ..... District of ..... :  
 In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No. ....
---	---	----------

To the  
 Honorable Judge of the District Court of the United States,  
 for the ..... District of ..... :



....., of ....., in the County of ....., and State of ....., in said District, respectfully represents: That on the ..... day of ....., 19..., last past, he was duly adjudged a bankrupt under the acts of Congress relating to bankruptcy; that he has duly surrendered all his property and rights of property and has fully complied with all the requirements of said acts and of the orders of the court touching his bankruptcy.

Wherefore, he prays that he may be decreed by the court to have a full discharge from all debts provable against his estate under said bankrupt acts, except such debts as are excepted by law from such discharge.

Dated this ..... day of ....., 19...

.....,  
*Bankrupt.*

[Verification.]

#### NOTES.

##### Sec. 14-a.

**Cross references.** Secs. 2 (12), 11-a, 17, 29-b, 38-a (4), 70-a-d.

**General Orders XII (3), XXXI.** See **Local Rules.**

Application made after one month and not later than twelve months subsequent to the adjudication, unless extension is obtained from judge for cause.

In re Holmes, 21 Am. B. R. 339; 165 Fed. 225.

In re Wagner, 15 Am. B. R. 100; 139 Fed. 87.

In re Knauer, 13 Am. B. R. 503; 133 Fed. 805.

When time to apply for begins to run.

Jurisdiction not conferred by consent.

In re Taylor (D. C. Ala.), 26 Am. B. R. 143; 188 Fed. 479.

In re Chase (D. C. Mass.), 26 Am. B. R. 456; 186 Fed. 408.

Application for discharge is an independent proceeding in which the jurisdiction and validity of prior proceedings *in personam* are not involved.

In re Walrath, 24 Am. B. R. 541; 175 Fed. 243.

In re Clisdell, 4 Am. B. R. 95; 101 Fed. 246.

In re Mason, 3 Am. B. R. 599; 99 Fed. 256.

The application should not be entertained until the first meeting of creditors and the examination of the bankrupt have been closed.

In re Johnson, 19 Am. B. R. 814; 158 Fed. 342.

Not a criminal proceeding.

In re Gaylord (C. C. A. 2nd Cir.), 7 Am. B. R. 1; 112 Fed. 668; 50 C. C. A. 415; aff'g, s. c. 5 Am. B. R. 410; 106 Fed. 883.

May be filed by personal representative of deceased bankrupt.

In re Agnew (D. C. N. Y.), 35 Am. B. R. 709; 225 Fed. 650.

##### Where filed.

In Southern District of New York by Rule VII, the office of the referee is the office of the court and petition for discharge is filed with the referee.

In re Pincus, 17 Am. B. R. 331; 147 Fed. 621.

Applications for discharge are in the nature of separate proceedings and in Northern District of Alabama should be filed with clerk of Bankruptcy Court.

In re Taylor, 26 Am. B. R. 143; 188 Fed. 479.

So, in Pennsylvania.

In re Hockman, 30 Am. B. R. 921; 205 Fed. 330.

[Practitioner should consult local district rules.]

Petition should be verified. Sec. 18-c.

In re Taylor (D. C. Ala.) (*supra*).

May be waived in some districts. s. c. (*supra*).

Member of a firm should ask discharge of both partnership and individual debts.

In re Laughlin, 3 Am. B. R. 1; 96 Fed. 589.

In re Hale, 6 Am. B. R. 35; 107 Fed. 432.

In re Russell, 3 Am. B. R. 91; 97 Fed. 32.

Petition for discharge may be amended.

In re Diamond (C. C. A. 2nd Cir.), 17 Am. B. R. 563; 149 Fed. 407; 79 C. C. A. 227.

Application may be dismissed for laches.

In re Lederer, 10 Am. B. R. 492; 125 Fed. 96.

Lindeke v. Converse, 28 Am. B. R. 596; 198 Fed. 618.

*Contra.* In re Wolff (D. C. Cal.), 13 Am. B. R. 95; 132 Fed. 396.

When bankrupt may not withdraw application.

In re Henschel (D. C. N. Y.), 12 Am. B. R. 31.

**When a discharge has been denied in a former proceeding, it is *res adjudicata* as to same debts scheduled in second proceeding.**

Kuntz v. Young (C. C. A. 8th Cir.), 12 Am. B. R. 506; 131 Fed. 719; 65 C. C. A. 477.

In re Weintraub, 13 Am. B. R. 711; 133 Fed. 1000.

In re Royal, 7 Am. B. R. 636; 113 Fed. 140.

In re Kuffler (C. C. A. 2nd Cir.), 18 Am. B. R. 16; 151 Fed. 12; 80 C. C. A. 508; rev'g 16 Am. B. R. 305; 144 Fed. 445. See also, s. c. 19 Am. B. R. 181; 155 Fed. 1018; aff'd, 22 Am. B. R. 289.

See, In re Elkind and Schwartz, 23 Am. B. R. 166; 175 Fed. 64; 99 C. C. A. 86.

In re Silverman (C. C. A. 2nd Cir.), 19 Am. B. R. 460; 157 Fed. 675; 85 C. C. A. 224.

In re Stone, 23 Am. B. R. 24; 172 Fed. 947.

In re Pullian (D. C. Tenn.), 22 Am. B. R. 513; 171 Fed. 595.

In re Westbrook (D. C. Ala.), 26 Am. B. R. 182; 186 Fed. 414.

Bacon v. Buffalo Cold Storage Co. (C. C. A. 5th Cir.), 27 Am. B. R. 736; 193 Fed. 34; 113 C. C. A. 358; certiorari denied, 225 U. S. 701; 56 L. Ed. 1264.

In re Wagner, (D. C. Nev.), 15 Am. B. R. 100; 139 Fed. 87.

In re Bramlett (D. C. Ga.), 20 Am. B. R. 402; 161 Fed. 588.

Pollet v. Cosel (C. C. A. 1st Cir.), 24 Am. B. R. 678; 179 Fed. 488; 103 C. C. A. 68.

In partnership cases.

In re Springer (D. C. No. Car.), 29 Am. B. R. 96; 199 Fed. 294.

Obtaining judgment on a debt after expiration of time within which to apply for a discharge creates no new debt.

In re Schnabel (D. C. N. Y.), 23 Am. B. R. 22; 166 Fed. 383.

Does not apply to former Bankruptcy Act.

In re Herrman (C. C. A. 2nd Cir.), 13 Am. B. R. 778; 136 Fed. 767; 69 C. C. A. 413.

**FORM No. 267.**

[*Official.*]

**ORDER TO SHOW CAUSE THEREON.**

..... District of ..... ss.:

On this ..... day of ....., A. D. 19..., on reading the foregoing petition for discharge, it is

Ordered by the Court, that a hearing be had upon the same before the Honorable Judge of the U. S. District Court, in the U. S. Court House at ....., on ....., 19..., at ..... M., and that notice thereof be published in the ....., a newspaper printed in said District, and that all known creditors and other persons in interest may appear at the said time and place and show cause, if any they have, why the prayer of the said petition should not be granted, and also attend the examination of the bankrupt thereon.

And it is further ordered by the Court that the Referee in charge shall send by mail to all known creditors copies of said petition and of this order addressed to them as required by law.

Witness, the Honorable Judge of the said Court, and the seal thereof, at the City of ..... in said District, on the ..... day of ....., 19...

.....,  
*Clerk.*

[As to notice to creditors see Amendment of 1910, sec. 58-a (9).]

[See Instructions to Referees, Southern District of New York, Rule 10.]

**Arrangement of Papers on Discharge, Southern District of New York.**

1. Record of Proceedings.
2. Order of Adjudication and Reference.
3. Order for first Meeting after 30 Days (when necessary).
4. Proofs of Publication and mailing Notice of first Meeting.
5. Memorandum of Proceedings at first Meeting.
6. Order dispensing with Trustee, if none.
7. Petition for Discharge.
8. Order to show Cause thereon.
9. Proof of Publication of Notice of Application for Discharge.
10. Proof of Mailing of Copy Petition for Discharge and Order thereon.
11. Referee's Certificate and Indemnity Account.
12. Receipt for Balance of Indemnity.

**FORM No. 268.**

**AFFIDAVIT OF MAILING PETITION FOR DISCHARGE.**

In the District Court of the United States,  
for the ..... District of .....  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER OF</p> <p>..... <i>Bankrupt.</i></p>	}	No.....
---	---	---------

STATE OF ..... }  
County of..... } ss.:

..... being duly sworn, deposes and says: I am employed in the office of ....., Referee in Bankruptcy, and am more than eighteen years of age; on the ..... day of ..... 19.., I deposited in the Post Office in said ..... of ....., copies of the annexed petition for discharge and order thereon to show cause, each contained in a securely closed envelope, franked by proper notice of official business whenever addressed to a place within the United States, and duly postpaid whenever addressed to a place without the United States, and duly directed respectively to each of the creditors of said bankrupt named in the schedules filed herein, at the respective addresses stated in said schedules, except in the cases, if any, in which the address of the creditor is stated in said schedules to be unknown, or where the creditor has designated an address other than that stated in said schedules, and in such case to such designated address as on file herein.

Subscribed and sworn to before me this

..... day of ....., A. D., 19...

.....,

**FORM No. 269.**

**NOTICE FOR PUBLICATION OF APPLICATION.**

United States District Court,  
..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p>.....</p> <p style="text-align: right;"><i>Bankrupt.</i></p>	} No.....
--	-----------

Notice is hereby given that ....., bankrupt, has filed his petition, dated ....., 19..., praying for a discharge from all his debts in bankruptcy, and that all creditors and other persons are ordered to attend at the hearing upon said petition before the United States District Judge, in the United States Court House, in the City of ....., County of ....., on ....., 19..., at....  
...M., and then and there show cause, if any they have, why the prayer of said petitioner should not be granted, and also attend the examination of the bankrupt thereon.

.....,  
*Referee in Bankruptcy.*

Dated ....., 19...

See, sec. 58-a (9). Amendments of 1910.

*[In Southern District of New York by Special Rule.]*

United States District Court.  
Southern District of New York:  
Bankruptcy.— No.....

Notice is given that ....., bankrupt, has applied for a discharge from all his debts. Creditors and parties interested are ordered to attend before this Court, in the Post-Office Building, Manhattan, New York, on ....., 19..., at 10.30 A. M. there to show cause why discharge should not be granted.

.....,  
*Referee in Bankruptcy.*



**FORM No. 270.**

In the District Court of the United States,  
for the ..... District of .....  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER OF</p> <p style="text-align: center;">..... <i>Bankrupt.</i></p>	}	No. ....
---	---	----------

I, ....., Referee in Bankruptcy, to whom the above entitled proceeding was duly referred by order of this court, do hereby

Certify that the forgoing is a record of the proceedings had before me in the above entitled proceeding, and I further certify that the schedules disclose ..... assets not exempt by law and that ..... trustee has been appointed herein, nor is any application for the appointment of a trustee pending; that the first meeting of creditors was held before me on ..... 19.., and that the examination of the bankrupt thereon has ..... been closed,

I further certify and report that, so far as appears by the record herein, said bankrupt has in all things conformed to the requirements of the United States Bankruptcy Act and has committed none of the offences and done none of the acts prohibited in sub-division b of Section 14 of said Act as amended, and is in my opinion entitled to his discharge,

And I further certify that the following is an itemized statement of the sums deposited with me as indemnity herein and of the items of charges against the same and of the balance remaining in my hands.

Dated ..... , 19...

.....  
*Referee in Bankruptcy.*

[Referee's Indemnity Account as required by District rule.]

**FORM No. 271.**

[Official.]

**ORDER OF DISCHARGE.**

District Court of the United States,

..... District of .....

Whereas, ..... in said District, ha been duly adjudged bankrupt under the acts of Congress relating to bankruptcy, and appear to have conformed to all the requirements of law in that behalf, it is therefore ordered by this Court that said ..... be discharged from all debts and claims which are made provable by said acts against ..... estate, and which existed on the ..... day of ....., A. D. ...., on which day the petition for adjudication was filed by ....., excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

Witness the Honorable ....., Judge of said District Court, and the seal thereof, this ..... day of ....., A. D. 19...

.....,  
*District Judge.*

.....,  
*Clerk,*

I, ....., Clerk of the District Court of the United States for the ..... District of ....., do hereby certify that the above is a true copy of an order of discharge made in the above-entitled matter.

In testimony whereof, I have caused the seal of the said Court to be hereto affixed, at the city of ....., in the ..... District of ....., this ..... day of ....., the year of our Lord, one thousand nine hundred and ..... and of the independence of the said United States the one hundred and .....

.....,  
*Clerk.*

**NOTES.****Order of discharge.**

In re Marshall Paper Co. (C. C. A. 1st Cir.), 4 Am. B. R. 468; 102 Fed. 872; 43 C. A. 38, rev'g in part 95 Fed. 419.

In re Royal, 7 Am. B. R. 636; 113 Fed. 140.

Unless there are dischargeable debts, no jurisdiction to discharge.

In re Gulick, 26 Am. B. R. 632; 186 Fed. 350.

In re Yates (D. C. Cal.), 8 Am. B. R. 69; 114 C. C. A. 365.

In re Maples (D. C. Mont.), 5 Am. B. R. 426; 105 Fed. 919.

Discharge may not be granted until the specifications of objection thereto have been disposed of.

In re Randall, 20 Am. B. R. 305; 159 Fed. 298.

As evidence.

A certified copy of an order granting a discharge is evidence of the jurisdiction of the court and the regularity of the proceedings.

Kreitlein v. Ferger (Ind. App. Ct.), 28 Am. B. R. 908; rev'd, on other grounds (s. c. U. S. Sup.), 34 Am. B. R. 862; 238 U. S. 21; 59 L. Ed. 1184.

Bankrupt entitled to a discharge unless he has committed an offense punishable under section 14-b as amended.

In re Crist, 9 Am. B. R. 1; 116 Fed. 1007.

In re Marshall Paper Co. (*supra*).

Even though he owes but one debt.

In re Frank, 6 Am. B. R. 156; 107 Fed. 272.

In re Schwaninger, 16 Am. B. R. 427; 144 Fed. 555.

**Partnership.**—When individuals as such not entitled to a discharge.

In re Hale, 6 Am. B. R. 35; 107 Fed. 432.

In re Pincus (D. C. N. Y.), 17 Am. B. R. 331; 147 Fed. 621.

When partnership debts not affected.

In re Hartman, 3 Am. B. R. 65; 96 Fed. 593.

In re Carmichael, 2 Am. B. R. 815; 96 Fed. 594.

In re Laughlin, 3 Am. B. R. 1; 96 Fed. 589.

In re McFaun, 3 Am. B. R. 66; 96 Fed. 592.

In re Meyers, 3 Am. B. R. 260; 97 Fed. 753.

In re Bertenshaw (C. C. A. 8th Cir.), 19 Am. B. R. 577; 157 Fed. 363; 85 C. C. A.

## 61.

Right to a discharge distinct from the effect of a discharge.

In re Blumberg, 1 Am. B. R. 633; 94 Fed. 476.

Right governed by law as it stood at the time bankrupt filed his petition in bankruptcy. In re Petersen, 10 Am. B. R. 355.

Right to discharge not affected by subsequent insanity.

In re Miller, 13 Am. B. R. 345; 133 Fed. 1017.

Corporation entitled thereto.

In re Marshall Paper Co. (*supra*).

Personal notice of the application not essential to the binding force of the decree.

Hanover National Bank v. Moyes (U. S. Sup.), 8 Am. B. R. 1; 186 U. S. 181; 46 L. Ed. 1113.

Mailing in the manner prescribed by the statute is sufficient.

In re Downing (D. C. N. Y.), 28 Am. B. R. 778; 199 Fed. 329.

Wheeler v. Newton (N. Y. App. Div.), 35 Am. B. R. 25; 154 N. Y. Supp. 431.

**Effect of discharge.**

Personal to the debtor.

*Bona fide* liens not affected.

Paxton v. Scott, 10 Am. B. R. 80.

Bassett v. Thackara (N. Y. Sup.), 16 Am. B. R. 786.

Howard v. Cunliff, 10 Am. B. R. 71; 69 S. W. 737.

In re Peterson (N. Y. App. Div.), 24 Am. B. R. 270, aff'g, s. c. 22 Am. B. R. 549.

Does not affect the right of the trustee or creditors to set aside a fraudulent conveyance.

Blick v. Nimmo, 30 Am. B. R. 770.

Stephenson v. Bird et al. (Sup. Ct. Ala.), 25 Am. B. R. 909.

In re Pierce, 4 Am. B. R. 554.

The mere acknowledgment of a debt discharged or the subsequent expression of an intention to pay same is not sufficient to revive the debt.

Coe v. Rosene (Wash. Sup. Ct.), 27 Am. B. R. 175.  
Effect upon obligation of principal to surety.  
Williams v. United States Fidelity & Guaranty Co. (U. S. Sup.), 34 Am. B. R. 181;  
rev'g 28 Am. B. R. 802.  
To be a bar must be pleaded.  
In re Rhutassel, 2 Am. B. R. 697; 96 Fed. 597.  
Effect of upon exempt property.  
Realty Co. v. Gioshio (Pa. Ct. Com. Pl.), 27 Am. B. R. 58.  
Does not affect funds in hands of trustee.  
Johnson v. Norris (C. C. A. 5th Cir.), 27 Am. B. R. 107; 190 Fed. 459; 111 C. C. A.  
291.

**Amendment of discharge.**

Where individual schedules firm debts.  
In re Kaufman (D. C. N. Y.), 14 Am. B. R. 393; 136 Fed. 262. In re Diamond  
(C. C. A. 2nd Cir.), 17 Am. B. R. 563; 149 Fed. 407; 79 C. C. A. 227.

**FORM No. 272.**

**NOTICE OF APPEARANCE OF OBJECTING CREDITOR.**

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER	} No. ....
OF	
..... <i>Bankrupt.</i>	

To the District Court of the United States for the ..... District of  
.....:

The Clerk of this Court will please enter my appearance as attorney for  
....., of ....., a creditor of ..... the  
bankrupt herein, who desires to file specifications of objection to the discharge  
of the bankrupt herein. (and demands an examination of the bankrupt for  
the purpose of framing specifications.)

Dated ....., 19...

.....,  
*Attorney for objecting creditor.*  
[Address.]

To ..... Esq.  
*Clerk.*

NOTES.

**Appearance of objecting creditor.**

**General Order XXXII.**

In re Ginsberg, 12 Am. B. R. 459; 130 Fed. 627.

Must be entered on return day.

In re Grant, 14 Am. B. R. 398; 135 Fed. 889.

In re Holman, 1 Am. B. R. 600; 92 Fed. 512.

In re Young, 20 Am. B. R. 697; 162 Fed. 912.

In re Barrager (D. C. Ia.), 27 Am. B. R. 366; 191 Fed. 247.

When creditors objecting to bankrupt's discharge filed specifications before the return day held immaterial that they failed to enter an appearance on return day as required by the General Order, as such filing is equivalent to an appearance.

In re Magen Bros. Co. (C. C. A. 3rd Cir.), 27 Am. B. R. 729; 192 Fed. 883; 113 C. C. A. 207.

Waiver by appearance.

In re Churchill (D. C. Wis.), 28 Am. B. R. 607; 197 Fed. 111.

In re Casey (D. C. N. Y.), 28 Am. B. R. 359; 195 Fed. 322.

**FORM No. 273.**

**AFFIDAVIT THAT NO SPECIFICATIONS HAVE BEEN FILED.**

District Court of the United States,

..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

State of ..... }  
County of ..... } ss.:

..... being duly sworn deposes and says:

1. That he is the attorney for the bankrupt herein.
2. That on the ..... day of ....., 19..., the application of the bankrupt above named for a discharge was on the calendar of this court and duly called: that ..... and ..... creditors appeared on said day and filed notices of appearance and were required to file specifications of objection within ten days which have now expired.
3. That deponent has searched in the clerk's office herein and finds that no specifications have been filed in said proceeding.

.....,

Sworn to before me this

day of ..... 19...



FORM No. 274.

SPECIFICATIONS OF OBJECTION TO DISCHARGE.

United States District Court,  
 ..... District of .....:  
 In Bankruptcy.

IN THE MATTER  OF  .....  <i>Bankrupt.</i>	}	No. ....
--	---	----------

..... of ....., County of ....., State of  
 ....., in the ..... District of ....., a creditor of  
 the above named bankrupt, does hereby oppose the granting to him of a  
 discharge from his debts and for the grounds of such opposition does file the  
 following specifications:

First. For the reason that the bankrupt herein has committed an offense  
 punishable by imprisonment under the Bankruptcy Act in that he has know-  
 ingly and fraudulently made a false oath and rendered a false account in and in  
 relation to his proceedings in bankruptcy, as follows:

[Here set forth facts specifically.]

.....  
 .....  
 Second. For the reason that he has committed an offense punishable by  
 imprisonment under the Bankruptcy Act in that he has knowingly and  
 fraudulently concealed, while a bankrupt, from his trustee property and assets  
 belonging to his estate, as follows:

.....  
 .....  
 Third. For the reason that with intent to conceal his true financial con-  
 dition he has failed to keep books of account or records, and has destroyed and  
 concealed books of account or records, from which such financial condition  
 might be ascertained.

Fourth. For the reason that during the course of the proceedings in said  
 bankruptcy he refused to answer material questions approved by the court, to  
 wit:

.....  
 .....

Wherefore, objection is made to the granting of such application for a discharge.

.....  
*Objecting Creditor.*

.....  
*Attorney for Creditor.*

[Address.]

[Verification.]

NOTES.

**Sec. 14-b. Specifications of objection.**

If appearance is entered, specifications need not be filed until 10 days thereafter.

**See General Order, XXXII.**

Mandatory provision.

In re Albrecht, 5 Am. B. R. 223; 104 Fed. 974.

In re Clothier, 6 Am. B. R. 203; 108 Fed. 199.

Time limit.

In re C. H. Kendrick & Co., 35 Am. B. R. 630; 226 Fed. 980.

Should be filed with clerk, not referee. s. c. (*supra*).

**Who may file.**—Any person having a pecuniary interest in resisting the discharge. One having an unliquidated claim may file.

In re Conroy, 14 Am. B. R. 249; 134 Fed. 764.

Bankrupt's schedules *prima facie* evidence that person scheduled is a creditor to enable such creditor to oppose discharge.

In re Barrager (D. C. Ia.), 27 Am. B. R. 366; 191 Fed. 247.

Creditor with unproved debt may file.

In re Nathanson (D. C. N. Y.), 19 Am. B. R. 56; 155 Fed. 645.

In re Frice (D. C. Ia.), 2 Am. B. R. 674; 96 Fed. 611.

Assignee of judgment with unproved claim.

Haley v. Pope (C. C. A. 9th Cir.), 30 Am. B. R. 644; 296 Fed. 266; 124 C. C. A. 330.

Creditor holding non-dischargeable debt not entitled to file. In re Servis, 15 Am. B. R. 271; 140 Fed. 222.

Remedy where such creditor has filed.

In re Nathanson (*supra*).

Attorney's authority to file presumed.

In re Gasser (C. C. A. 8th Cir.), 5 Am. B. R. 32; 104 Fed. 537; 44 C. C. A. 20.

Filing *nunc pro tunc*.

In re Frice, 2 Am. B. R. 674; 96 Fed. 611.

A creditor may prosecute objections *in forma pauperis*.

In re Guilbert, 18 Am. B. R. 830; 154 Fed. 676.

Several creditors may sign and verify the same specifications of objection.

Milgraum v. Ost, 12 Am. B. R. 306; 129 Fed. 827.

Two grounds of objection may not be alleged in one specification.

In re Wetmore, 6 Am. B. R. 703.

Objection of non-residence.

In re Goodale, 6 Am. B. R. 493; 109 Fed. 783.

Specifications must be clear and unequivocal and contain specific averments of facts, not mere conclusions.

In re Taplin, 14 Am. B. R. 360; 135 Fed. 861.

In re Levey, 13 Am. B. R. 312; 133 Fed. 572.

In re Thomas, 1 Am. B. R. 515; 92 Fed. 912.  
 In re Holman, 1 Am. B. R. 600; 92 Fed. 512.  
 In re Hixon, 1 Am. B. R. 610; 93 Fed. 440.  
 In re Quackenbush, 4 Am. B. R. 274; 102 Fed. 282.  
 In re Gross, 5 Am. B. R. 271.  
 In re Wolfensohn, 5 Am. B. R. 60.  
 In re Shepherd, 2 N. B. N. Rep. 1020.  
 In re Servis, 15 Am. B. R. 271; 140 Fed. 222.  
 In re Parish, 10 Am. B. R. 548; 122 Fed. 553.  
 Bragassa v. St. Louis Cycle, 5 Am. B. R. 700; 107 Fed. 77.  
 In re McGurn, 4 Am. B. R. 459; 102 Fed. 743.  
 In re Ginsburg, 12 Am. B. R. 459; 130 Fed. 627.  
 In re Gara (D. C. Pa.), 26 Am. B. R. 573; 190 Fed. 112.  
 Not as strict as an indictment.  
 In re Blalock, 9 Am. B. R. 266; 118 Fed. 679.

**Grounds of objection limited to those set forth in specifications.**

In re Taplin (*supra*).  
 In re Halsell, 13 Am. B. R. 106; 132 Fed. 562.  
 In re Peacock, 4 Am. B. R. 136; 101 Fed. 560.  
 In re Hendrick, 14 Am. B. R. 795; 138 Fed. 473.  
 Intermingling of property amounting to concealment.  
 In re Graves, 26 Am. B. R. 633; 189 Fed. 847.  
 Rule of District Court as to dismissal for laches held not invalid as adding a new ground for the refusal of a discharge.  
 In re Wollowitz (C. C. A. 2nd Cir.), 27 Am. B. R. 558; 192 Fed. 105; 112 C. C. A. 445.

Lindeke v. Converse, 28 Am. B. R. 596; 198 Fed. 618; 117 C. C. A. 322.  
 Delay in bringing on the hearing is not a ground for refusing a discharge.  
 In re Glasberg (C. C. A. 2nd Cir.), 28 Am. B. R. 826; 197 Fed. 896; 117 C. C. A. 235.  
 One of the statutory grounds must be alleged and proved.  
 In re Griffin Bros., 19 Am. B. R. 78; 154 Fed. 537.  
 In re Frank, 6 Am. B. R. 156; 107 Fed. 272.  
 In re Chamberlain (D. C. N. Y.), 25 Am. B. R. 37; 180 Fed. 304.  
 Preference made without intent to defraud.  
 In re Mintzer, 28 Am. B. R. 743; 197 Fed. 647.  
 Effect of perjury upon granting of discharge.  
 In re Kretsch (D. C. N. Y.), 22 Am. B. R. 284; 172 Fed. 523.

**Sufficiency of specifications.**

E. H. Godshalk Co. v. Sterling (C. C. A. 3rd Cir.), 12 Am. B. R. 302; 129 Fed. 580;  
 64 C. C. A. 148.  
 In re Blumberg, 13 Am. B. R. 343; 133 Fed. 845.  
 In re Mero, 12 Am. B. R. 171; 128 Fed. 630.  
 Milgraum v. Ost, 12 Am. B. R. 306; 129 Fed. 827.  
 In re Troeder (C. C. A. 1st Cir.), 17 Am. B. R. 723; 150 Fed. 710; 80 C. C. A. 376  
 In re Wetmore, 6 Am. B. R. 703.  
 In re Hirsch, 2 Am. B. R. 715; 96 Fed. 468.  
 In re McNamara, 2 Am. B. R. 566; 95 Fed. 429.  
 In re Adams, 22 Am. B. R. 613; 171 Fed. 599.  
 In re Kaiser, 3 Am. B. R. 767; 99 Fed. 689.  
 In re Wakefield (D. C. N. Y.), 31 Am. B. R. 42; 207 Fed. 180.

May sufficiency be attacked before special master to whom specifications have been referred?

In re Quackenbush (D. C. N. Y.), 4 Am. B. R. 274; 102 Fed. 282.

**"Knowingly and fraudulently."**

In re Patterson, 10 Am. B. R. 371; 121 Fed. 921.

In re Blalock (*supra*). In re Beebe, 8 Am. B. R. 597; 116 Fed. 48. In re Peck, 9 Am. B. R. 747; 120 Fed. 972.

Klein v. Powell (C. C. A. 3rd Cir.), 23 Am. B. R. 494; 174 Fed. 640; 98 C. C. A. 394.

In re Griffin Bros., 19 Am. B. R. 78; 154 Fed. 537.

May be amended to include this allegation.

In re Knaszak (D. C. N. Y.), 18 Am. B. R. 187; 151 Fed. 503.

W. S. Peck Co. v. Lowenbein (C. C. A. 4th Cir.), 24 Am. B. R. 138; 178 Fed. 178; 101 C. C. A. 498.

Gilpin v. Merchants' Nat. Bank (C. C. A. 2nd Cir.), 21 Am. B. R. 429; 165 Fed. 607; 91 C. C. A. 445.

**Burden of proof.**

Upon objecting creditors.

In re Logan, 4 Am. B. R. 525; 102 Fed. 876. In re Jacobs, 16 Am. B. R. 482; 144 Fed. 868. In re Eades, 16 Am. B. R. 30; 143 Fed. 293; 74 C. C. A. 431.

In re Wetmore, 3 Am. B. R. 700; 99 Fed. 703.

In re Hamilton, 13 Am. B. R. 333; 133 Fed. 823.

Burden on innocent partner.

In re Schachter (D. C. N. Y.), 22 Am. B. R. 389; 170 Fed. 683.

Proof must be clear and convincing, but not necessarily, "beyond a reasonable doubt."

In re Steed and Curtis, 6 Am. B. R. 73; 107 Fed. 682.

In re Berner, 4 Am. B. R. 383. In re Troeder (C. C. A. 1st Cir.), 17 Am. B. R. 723; 150 Fed. 710; 80 C. C. A. 376.

Garry v. Jefferson Bank (C. C. A. 5th Cir.), 26 Am. B. R. 511; 186 Fed. 461; 108 C. C. A. 439.

Mere suspicion insufficient.

In re Miller (C. C. A. 2nd Cir.), 32 Am. B. R. 397; 212 Fed. 920; 129 C. C. A. 440; rev'g, s. c. 30 Am. B. R. 113; 203 Fed. 170.

**Verification of specifications.**

Should be verified. In re Baerneop (D. C. Pa.), 9 Am. B. R. 133; 117 Fed. 975.

In re Glass (D. C. Tenn.), 9 Am. B. R. 391; 119 Fed. 509.

"Upon information and belief", insufficient.

In re White (D. C. Ore.), 34 Am. B. R. 803; 222 Fed. 688.

In re Thomas (D. C. Ia.), 1 Am. B. R. 515; 92 Fed. 912.

*Contra.* In re Jamieson (D. C. Ill.), 9 Am. B. R. 681; 120 Fed. 697.

If verified by counsel, state reasons why.

In re Baerncoff (*supra*).

In re Bellah, 8 Am. B. R. 310; 116 Fed. 69.

In re Osborne (C. C. A. 1st Cir.), 8 Am. B. R. 165; 115 Fed. 1; 52 C. C. A. 595.

In re Randall, 20 Am. B. R. 305; 159 Fed. 298.

In re Peck (D. C. Conn.), 9 Am. B. R. 747; 120 Fed. 972.

See, In re Glass (*supra*), and Milgraum v. Ost (*supra*).

**Sufficiency of verification.**

In re Nathanson, 19 Am. B. R. 56; 155 Fed. 645.

Milgraum v. Ost, 12 Am. B. R. 306; 129 Fed. 827.

Omission of, may be supplied by amendment.

In re Meurer, 15 Am. B. R. 823; 141 Fed. 445.

In re Gift, 12 Am. B. R. 244; 130 Fed. 230.

In re Brown (C. C. A. 5th Cir.), 7 Am. B. R. 252; 112 Fed. 49; 50 C. C. A. 118.

In re Miller, 27 Am. B. R. 606; 192 Fed. 730.

Objection to lack of verification may not be made after case is submitted.

In re Robinson, 10 Am. B. R. 477; 123 Fed. 844.

Objection to jurat may not be raised for first time on petition for review.

E. H. Godshalk Co. v. Sterling (C. C. A. 3rd Cir.), 12 Am. B. R. 302; 129 Fed. 580;  
64 C. C. A. 148.

#### Objections to discharge. Sec. 14-b.

- (1) "Committed an offense punishable by imprisonment, etc.," refers to Sec. 29-b,  
(1) (2).

#### Concealment of property. 29-b (1).

In re Breitling (C. C. A. 7th Cir.), 13 Am. B. R. 126; 133 Fed. 146; 66 C. C. A. 212.

In re Baudouine (C. C. A. 2nd Cir.), 3 Am. B. R. 651; 101 Fed. 574; 41 C. C. A.  
318; rev'g 3 Am. B. R. 551; 96 Fed. 536.

Vehon v. Ullman (C. C. A. 7th Cir.), 17 Am. B. R. 435; 147 Fed. 694; 78 C. C. A. 82.

As to what constitutes.

In re Meyers, 5 Am. B. R. 4; 105 Fed. 353.

In re Brown, 15 Am. B. R. 350; 140 Fed. 383.

In re Gaylord, 7 Am. B. R. 1; 112 Fed. 668; 50 C. C. A. 415.

In re Quackenbush, 4 Am. B. R. 274; 102 Fed. 282.

Gift to wife.

In re Hirshowitz (D. C. Pa.), 27 Am. B. R. 701; 194 Fed. 562.

In re Guilbert (D. C. Pa.), 22 Am. B. R. 221; 169 Fed. 149.

In re Wermuth (D. C. N. Y.), 24 Am. B. R. 785; 179 Fed. 1009.

In re McCann et al. (D. C. Pa.), 24 Am. B. R. 789; 179 Fed. 575.

A bankrupt may not plead advice of counsel for failure to schedule assets.

In re Remmers, 23 Am. B. R. 78; 173 Fed. 484; 97 C. C. A. 490.

Value immaterial.

In re Lowenstein (D. C. N. Y.), 2 Am. B. R. 193.

In re Becker, 5 Am. B. R. 438.

Not guilty of concealment, for omitting worthless securities from schedules.

In re McCrea (C. C. A. 2nd Cir.), 20 Am. B. R. 412; 161 Fed. 246; 88 C. C. A. 282.

Effect of scheduling property afterwards attempted to be concealed.

In re Doyle, 29 Am. B. R. 102; 199 Fed. 247.

Income from trust funds where status is uncertain.

In re Buchanan (C. C. A. 2nd Cir.), 33 Am. B. R. 638; 219 Fed. 492; 135 C. C. A.  
204.

#### "Continuing concealment."

In re Jacobs and ano., 17 Am. B. R. 470; 147 Fed. 797. In re Griffin Bros., 19 Am.  
B. R. 78; 154 Fed. 537. In re Delmour, 20 Am. B. R. 405; 161 Fed. 589. In re Alle-  
man, 20 Am. B. R. 745; 162 Fed. 693. In re James, 23 Am. B. R. 703; 175 Fed. 894;  
aff'd, James v. Stone et al., 24 Am. B. R. 288; 181 Fed. 476; 104 C. C. A. 224.

Property conveyed to third person in secret trust.

In re Bemis (D. C. N. Y.), 5 Am. B. R. 36.

See, Collier, 10th Ed. pp. 340, 341.

The wrongful act when once committed may not be avoided so as to restore the  
dishonest bankrupt to his former status and enable him to reap the benefit, notwith-  
standing the attempt.

In re Sussman (D. C. Pa.), 26 Am. B. R. 18; 190 Fed. 111.



**What does not constitute concealment of property within statute warranting denial of discharge.**

Under Secs. 14-b and 29-b, the fact that the bankrupt prior to bankruptcy conveyed property, although fraudulently, so that at the time of filing his petition he had no right, title or interest therein, does not constitute a concealment of property belonging to his estate in bankruptcy so as to warrant the denial of his discharge.

In re Hammerstein (C. C. A. 2nd Cir.), 26 Am. B. R. 757; 189 Fed. 37; 110 C. C. A. 472.

In re Dauchy (D. C. N. Y.), 10 Am. B. R. 527; aff'd, s. c. 11 Am. B. R. 511; 130 Fed. 532; 65 C. C. A. 78.

In re Hennebry (D. C. Ia.), 31 Am. B. R. 231; 207 Fed. 882.

In re Wakefield (D. C. N. Y.), 31 Am. B. R. 42; 207 Fed. 180.

In re Schickerling (C. C. A. 2nd Cir.), 30 Am. B. R. 312; 204 Fed. 592; 123 C. C. A. 60.

When recording is required.

In re McKane (D. C. N. Y.), 19 Am. B. R. 103; 155 Fed. 674.

Degree of proof required.

Denial of a discharge because of fraudulent concealment of assets or of a false oath by the bankrupt must be made out by clear and convincing proof and is not subject of mere suspicion or inference.

In re Taylor, 26 Am. B. R. 143; 188 Fed. 479.

Fair preponderance.

In re Bacon (D. C. N. Y.), 30 Am. B. R. 584; 205 Fed. 545.

In re Guilbert (D. C. Pa.), 22 Am. B. R. 221; 169 Fed. 149.

In re Nelson (D. C. N. Y.), 23 Am. B. R. 37; 179 Fed. 320.

In re Delmour (D. C. N. Y.), 20 Am. B. R. 405; 161 Fed. 589.

#### **False oath or account. 29-b (2).**

"A false oath in the proceeding." What constitutes.

In re Goodale, 6 Am. B. R. 493; 109 Fed. 783.

In re Hamilton, 13 Am. B. R. 333; 133 Fed. 823.

In re Boyden, 13 Am. B. R. 269; 132 Fed. 991.

In re Sheinberg, 35 Am. B. R. 132; 223 Fed. 218.

In re Luftig, 15 Am. B. R. 773; 166 Fed. 322.

In re Nathanson (D. C. N. Y.), 19 Am. B. R. 56; 155 Fed. 645.

In re Eaton (D. C. N. Y.), 6 Am. B. R. 531.

Necessity of pointing out offense in specification.

In re Mayer (D. C. N. Y.), 28 Am. B. R. 342; 195 Fed. 571.

When bankrupt deemed to have testified falsely.

In re Berger (D. C. N. Y.), 29 Am. B. R. 712; 200 Fed. 325.

Once a bankrupt has given material testimony, which he intends to be taken as such and which he knows to be false, the offense is complete, whatever may be his subsequent atonement; but it is open to the bankrupt to show from his whole testimony, that his testimony, if actually false, was not intended to mislead upon a material point.

In re Marcus & Scherr (D. C. N. Y.), 27 Am. B. R. 164; 192 Fed. 743; aff'd, 30 Am. B. R. 176; 203 Fed. 29; 121 C. C. A. 393.

In other proceeding.

In re Blalock (D. C. S. C.), 9 Am. B. R. 266; 118 Fed. 679.

Contra. In re J. S. Lesser (C. C. A. Ind. Cir.), 36 Am. B. R. 833.

In re Shear (D. C. N. Y.), 29 Am. B. R. 688; 201 Fed. 460.

Degree of proof required.

In re Revkin (D. C. Conn.), 33 Am. B. R. 170; 216 Fed. 218.

#### **(2) Failure to keep, destruction or concealment of books.**

In re Alvord, 14 Am. B. R. 264; 135 Fed. 236.

In re Boasberg, 1 Am. B. R. 353.

In re Prager, 13 Am. B. R. 527; 134 Fed. 1006.

E. H. Godshalk Co. v. Sterling (C. C. A. 3rd Cir.), 12 Am. B. R. 302; 129 Fed. 580; 64 C. C. A. 148.

In re Ginsberg, 12 Am. B. R. 459; 130 Fed. 627.

In re Wolf, 19 Am. B. R. 70; 156 Fed. 543.

In re Lewin, 18 Am. B. R. 72; 155 Fed. 501.

In re Eades (C. C. A. 7th Cir.), 16 Am. B. R. 30; 143 Fed. 293; 74 C. C. A. 431.

In re Wiedmann, 26 Am. B. R. 697; 188 Fed. 684.

Use of numbers instead of names by stockbroker in his books.

In re A. O. Brown & Co. (C. C. A. 2nd Cir.), 30 Am. B. R. 305; 204 Fed. 63; 122 C. C. A. 377.

Variance. In re Halsell, 13 Am. B. R. 106; 132 Fed. 562.

Word "fraudulent" no longer in Sec. 14 of Act.

In re Linker (D. C. N. Y.), 33 Am. B. R. 709; 222 Fed. 173.

In re Weston (C. C. A. 2nd Cir.), 30 Am. B. R. 647; 206 Fed. 281; 124 C. C. A. 345.

As to right of innocent partner to discharge.

In re Schachter (D. C. N. Y.), 22 Am. B. R. 389; 170 Fed. 682.

Bankrupt held for default of wife, who manages his business, to keep books.

In re Janavitz (D. C. Pa.), 32 Am. B. R. 501; aff'd (C. C. A. 3rd Cir.), 34 Am. B. R. 105; 219 Fed. 876; 135 C. C. A. 546.

Employment of bookkeeper.

In re Marcus & Scherr (C. C. A. 2nd Cir.), 30 Am. B. R. 176; 203 Fed. 29; 121 C. C. A. 393; aff'g, s. c. 27 Am. B. R. 164; 192 Fed. 743.

Sufficiency of specification following language of statute as to destruction, concealment or failure to keep books of account.

In re Magen Bros. (C. C. A. 3rd Cir.), 27 Am. B. R. 729; 192 Fed. 883; 113 C. C. A. 207.

In re Lewis (D. C. N. Y.), 20 Am. B. R. 711; 163 Fed. 137.

In re Brod, 21 Am. B. R. 426; 166 Fed. 1011.

In re Patterson, 10 Am. B. R. 371; 121 Fed. 921.

**Failure to keep books.**

**Intent.**—Not necessary to prove fraudulent intent.

In re Newbury & Dunham (C. C. A. 2nd Cir.), 31 Am. B. R. 365; 209 Fed. 195; 126 C. C. A. 207.

In re Hanna (C. C. A. 2nd Cir.), 21 Am. B. R. 843; 168 Fed. 238; 93 C. C. A. 452.

In re Brown (D. C. N. Y.), 29 Am. B. R. 73; 199 Fed. 356.

In re Linker (D. C. N. Y.), 33 Am. B. R. 709; 222 Fed. 173.

Intent to conceal financial condition as distinguished from intent to keep imperfect books.

In re Marcus & Scherr (D. C. N. Y.), 27 Am. B. R. 164; 192 Fed. 743; aff'd, 30 Am. B. R. 176; 203 Fed. 29; 121 C. C. A. 393.

In re Garrison (C. C. A. 2nd Cir.), 17 Am. B. R. 831; 149 Fed. 178; 79 C. C. A. 126.

In re Idzall (D. C. Ia.), 2 Am. B. R. 741; 96 Fed. 314.

In re Brockman (D. C. Ky.), 21 Am. B. R. 251; 168 Fed. 1015.

*Contra.* In re Alvord (D. C. Conn.), 14 Am. B. R. 264; 135 Fed. 236.

**Presumption of intent.**

In re Sims, 32 Am. B. R. 564; 213 Fed. 992.

In re Schachter (D. C. N. Y.), 22 Am. B. R. 389; 170 Fed. 683.

McKibbin, Driscoll and Dorsey v. Haskell (C. C. A. 8th Cir.), 28 Am. B. R. 588; 198 Fed. 639; 117 C. C. A. 343.

In re Goldich (D. C. Pa.), 21 Am. B. R. 249; 164 Fed. 882.

In re Hodge (D. C. N. Y.), 30 Am. B. R. 522; 205 Fed. 824.

#### **Proof of intent.**

Must almost always be indirect.

In re Schachter (*supra*).

In re Feldstein (C. C. A. 2d Cir.), 8 Am. B. R. 160; 115 Fed. 269; 53 C. C. A. 479; aff'g, s. c. 6 Am. B. R. 458.

#### **Mere suspicion not enough.**

In re Howard (C. C. A. 2d Cir.), 24 Am. B. R. 841; 180 Fed. 399; 103 C. C. A. 545.

In re Keefer (D. C. N. Y.), 14 Am. B. R. 290; 135 Fed. 885.

In re Hamilton (D. C. N. Y.), 13 Am. B. R. 333; 133 Fed. 823.

"Intent to conceal financial condition" must be alleged in specification, but same is amendable.

In re Bradin (D. C. Pa.), 24 Am. B. R. 793; 179 Fed. 768.

E. H. Godshalk Co. v. Sterling (C. C. A. 3d Cir.) (*supra*)

#### **(3) Obtained money or property on credit upon materially false statement, etc.**

In re Terens (D. C. Wis.), 22 Am. B. R. 895; 172 Fed. 938.

In re Levey, 13 Am. B. R. 312; 133 Fed. 572.

In re Harr, 16 Am. B. R. 213; 143 Fed. 421.

In re Miller, 27 Am. B. R. 606; 192 Fed. 730.

False statement made as officer of corporation.

In re Bleyer (D. C. N. Y.), 32 Am. B. R. 98; 210 Fed. 391; aff'd, s. c. 33 Am. B. R. 76; 215 Fed. 896; 132 C. C. A. 236.

Where bankrupt has obtained goods by means of a false statement there can be no discharge though the statement was not intentionally false.

In re Shaffer (D. C. W. Va.), 22 Am. B. R. 147; 169 Fed. 724; aff'd, Shaffer v. The Koblegard Co. (C. C. A. 4th Cir.), 24 Am. B. R. 898; 183 Fed. 71; 105 C. C. A. 363.

Effect of subsequent release from debts omitted from statement.

Josephs v. Powell and Co. (C. C. A. 2nd Cir.), 32 Am. B. R. 222; 213 Fed. 627; 130 C. C. A. 291; rev'g In re Josephs, 30 Am. B. R. 586; 205 Fed. 548.

What insufficient.

In re Sabsevitz (D. C. N. Y.), 28 Am. B. R. 623 and foot note; 197 Fed. 109.

Not proximate cause of loss.

In re Braverman (D. C. N. Y.), 28 Am. B. R. 513; 199 Fed. 863.

Morris v. Talcott, 96 N. Y. 100.

"The right to object on this ground not confined to the person defrauded but belongs to any party in interest."

In re Carton and Co., 17 Am. B. R. 343; 148 Fed. 63.

See, In re Steed, 6 Am. B. R. 73; 107 Fed. 682.

In re Dresser and Co. (C. C. A. 2nd Cir.), 16 Am. B. R. 561; 146 Fed. 383; 76 C. A. 655.

In re Pincus, 17 Am. B. R. 331; 147 Fed. 621.

In re Pfaffinger, 19 Am. B. R. 309; 154 Fed. 328; mod'fg 19 Am. B. R. 41.

In re Brener, 20 Am. B. R. 644; 166 Fed. 930.

In re Lewis (D. C. N. Y.), 20 Am. B. R. 711; 163 Fed. 137.

In re Miller (D. C. Ia.), 27 Am. B. R. 606.

In re Reed (D. C. Okla.), 26 Am. B. R. 286; 191 Fed. 920.

Omission of loans made by relatives.

Presumption of intent to deceive.

In re Arenson (D. C. N. J.), 28 Am. B. R. 113; 195 Fed. 609.

In re Brener (D. C. N. Y.), 20 Am. B. R. 644; 166 Fed. 930.

As to non-participating partner.

False statement in writing to obtain credit made by one partner, discharge refused to innocent partner.

In re Schwartz and Co. (D. C. N. Y.), 28 Am. B. R. 670; 201 Fed. 166.

Compare In re Neyland and McKeithen (D. C. Miss.), 24 Am. B. R. 879; 184 Fed. 144.

Frank v. Michigan Paper Co. (C. C. A. 4th Cir.), 24 Am. B. R. 261; 179 Fed. 776; 103 C. C. A. 268.

In re Cantor, 26 Am. B. R. 859.

But see on general rule.

In re Dresser, 13 Am. B. R. 616; 144 Fed. 318; aff'd, 16 Am. B. R. 561; 146 Fed. 383; 76 C. C. A. 655.

Hardie v. Swafford (C. C. A. 5th Cir.), 21 Am. B. R. 457; 165 Fed. 588; 91 C. C. A. 426; rev'g In re Hardie and Co. (D. C. Texas), 16 Am. B. R. 313; 143 Fed. 553.

Ragan, Malone and Co. v. Cotton and Preston (C. C. A. 5th Cir.), 29 Am. B. R. 597; 200 Fed. 546; 118 C. C. A. 640; rev'g In re Cotton and Preston (D. C. Ga.), 25 Am. B. R. 517; 183 Fed. 181.

See Collier (10th Ed.), p. 355.

#### **False statement to a commercial agency.**

In re Russell (C. C. A. 2nd Cir.), 23 Am. B. R. 850; 176 Fed. 253; 100 C. C. A. 77.

In re Kyte (D. C. Pa.), 23 Am. B. R. 414; 174 Fed. 867.

In re Carton and Co. (*supra*).

In re Simon (D. C. N. Y.), 29 Am. B. R. 808; 201 Fed. 1004.

Must appear that agency was in some sense the representative of the creditor from whom money or property was obtained or that the representations made to agency were in some way communicated to or relied upon by the creditor.

In re Kretz (D. C. Wash.) 32 Am. B. R. 365; 212 Fed. 784.

In re Foster (D. C. Miss.) 24 Am. B. R. 368.

In re Witman (D. C. N. Y.) 32 Am. B. R. 780; 215 Fed. 286.

General statements not specifically asked for.

In re Zoffer (C. C. A. 2nd Cir.), 33 Am. B. R. 652; 211 Fed. 936; 128 C. C. A. 434.

Intent to deceive may be inferred.

In re Augspurger (D. C. O.), 25 Am. B. R. 83; 181 Fed. 174.

#### **Statement to commercial agency.**

Effect of.

In re Augspurger (*supra*).

False statement in writing made by bankrupt's bookkeeper held sufficient to bar discharge under Section 14 (3).

In re Savarese (C. C. A. 2nd Cir.) 31 Am. B. R. 758; 209 Fed. 830; 126 C. C. A. 554.

In re Clountier Bros., 228 Fed. 569.

Made by agent held sufficient.

In re Reed (D. C. Okla.) 26 Am. B. R. 286; 191 Fed. 920.

#### **(4) Made a fraudulent transfer.**

In re Berry and Co., 15 Am. B. R. 360; 146 Fed. 623.

In re Gift, 12 Am. B. R. 244; 130 Fed. 230.

In re Miller, 14 Am. B. R. 329; 135 Fed. 591.

In New York a conveyance made before the four months' period with intent to hinder, delay and defraud creditors but recorded within such period may be pleaded as a ground of objection.

In re McKane, 19 Am. B. R. 103; 155 Fed. 674.

Intent to prefer and intent to defraud.



In re Julius Bros. (C. C. A. 2nd Cir.), 32 Am. B. R. 699; 217 Fed. 3; 133 C. C. A. 328; rev'g, s. c. 31 Am. B. R. 132; 209 Fed. 371.

When the specifications are entirely upon the ground that bankrupt has conveyed property with intent to hinder, delay and defraud creditors evidence of concealment of property is irrelevant.

In re Bouck, 28 Am. B. R. 378; 199 Fed. 453.

See rule as stated in Van Iderstein v. National Discount Co. (C. C. A. 2nd Cir.), 23 Am. B. R. 345; 174 Fed. 518; 98 C. C. A. 300; aff'd, 227 U. S. 575; 57 L. Ed. 652. A preference, since amendment of 1903, no bar.

In re Maher et al. (D. C. Mass.), 16 Am. B. R. 340; 144 Fed. 503; aff'g 15 Am. B. R. 780.

In re Friedrich (D. C. Minn.), 28 Am. B. R. 656; 199 Fed. 193.

In re Bouck (*supra*).

Transfers in violation of Bulk Sales Law of State.

In re De Nomme, 32 Am. B. R. 744 and foot note; 214 Fed. 671.

(5) A previous discharge in voluntary proceedings within six years.

See, In re Neely, 12 Am. B. R. 407; 134 Fed. 667.

In re Lachenmaier (C. C. A. 7th Cir.), 29 Am. B. R. 325; 203 Fed. 32; 121 C. C. A. 368.

As to when time begins to run.

In re Little (C. C. A. 7th Cir.), 13 Am. B. R. 640; 137 Fed. 521; 70 C. C. A. 105.

In re Jordan, 15 Am. B. R. 449; 142 Fed. 292.

In re Smith, 19 Am. B. R. 63; 155 Fed. 688.

In re Haase, 17 Am. B. R. 528; 155 Fed. 553; aff'd, s. c. (C. C. A. 2nd Cir.), 21 Am. B. R. 928; 164 Fed. 1022; 90 C. C. A. 667.

Measured from date of first discharge to the time of filing the second petition for discharge and not to the date of the granting thereof.

In re Dunphy (D. C. Me.), 30 Am. B. R. 760; 206 Fed. 680.

See, Remington on Bankruptcy, p. 2399.

(6) Refusal to obey a lawful order or to answer a material question approved by the Court.

In re Nachman, 8 Am. B. R. 180; 114 Fed. 995.

In re Dresser (D. C. N. Y.), 13 Am. B. R. 616; 144 Fed. 318; aff'd, 16 Am. B. R. 561; 146 Fed. 383; 76 C. C. A. 655.

Broomfield v. Lehman, 215 Fed. 97.

Refusal to answer material question upon ground that answer would tend to incriminate, such election sufficient to bar discharge and it is immaterial that bankrupt subsequently answered.

In re Schwartz and Co., 28 Am. B. R. 670; 201 Fed. 166.

Refusal to answer incriminating questions.

In re Weinreb (C. C. A. 2nd Cir.), 18 Am. B. R. 387; 153 Fed. 363; 82 C. C. A. 439; certiorari denied, 203 U. S. 588; 51 L. Ed. 329.

Evasive answers.

In re Fanning (D. C. N. Y.), 19 Am. B. R. 55; 155 Fed. 701.

In re Cabus (D. C. N. Y.), 6 Am. B. R. 156.

**Dischargeable debts.**

Judgment in conversion.

Fechter v. Postel (N. Y.), 17 Am. B. R. 316; 114 App. Div. (N. Y.) 776.

In re Hale, 20 Am. B. R. 633; 161 Fed. 387.

In re Ennis and Stoppani (D. C. N. Y.), 22 Am. B. R. 679; 171 Fed. 755.

Maxwell v. Martin, 22 Am. B. R. 93; 130 App. Div. (N. Y.) 80.



In re Floyd, Crawford and Co. (D. C. N. Y.), 15 Am. B. R. 277.

Wood v. Fisk and ano. (N. Y. App. Div.), 31 Am. B. R. 824; 141 N. Y. Supp. 342; 156 App. Div. (N. Y.) 497; aff'd, s. c. 35 Am. B. R. 46.

Conversion by pledgor of goods held as bailee.

In re Toklas Bros. (D. C. N. Y.), 29 Am. B. R. 709; 201 Fed. 377.

Ulner v. Doran (N. Y. App. Div.), 34 Am. B. R. 410; 167 App. Div. (N. Y.), 259; 152 N. Y. Supp. 655.

When conversion by stockbrokers held to be "wilful and malicious injury to property," under Section 17 (2).

Kavanaugh v. McIntyre et al. (N. Y. Ct. of App.), 31 Am. B. R. 712; 210 N. Y. 175; aff'g 151 App. Div. (N. Y.) 910; 135 N. Y. Supp. 1120.

In re Arnao (D. C. N. Y.), 32 Am. B. R. 88; 210 Fed. 395.

Judgment for negligence except for wilful and malicious injuries.

In re Wakefield, 31 Am. B. R. 42; 207 Fed. 180.

In re Grout (Vt. Sup. Ct.), 33 Am. B. R. 789.

Neither the judgment nor allegations of the complaint are conclusive.

Hiteshue v. Jones (Pa. Ct. of Com. Pl.), 28 Am. B. R. 854.

### **Non-dischargeable debts.**

Judgment for assault and battery, false imprisonment and malicious prosecution. McChristal v. Clisbee, 16 Am. B. R. 838; 109 Mass. 120.

Judgment for assault entitled to full faith and credit.

Peters v. United States ex rel. Kelley (C. C. A. 7th Cir.), 24 Am. B. R. 206; 177 Fed. 885; 101 C. C. A. 99; rev'g In re Kelly, 22 Am. B. R. 177; 166 Fed. 613.

Judgments for malicious and wilful injuries to person and property of another.

Flanders v. Mullin, 18 Am. B. R. 708; 80 Vt. 124.

Thompson v. Judy (C. C. A. 6th Cir.), 22 Am. B. R. 154; 169 Fed. 553; 95 C. A. 51.

In re Halper, 31 Am. B. R. 283; 82 Misc. (N. Y.) 205.

Judgments for fraud and deceit.

In re Benoit, 20 Am. B. R. 270; 124 App. Div. (N. Y.) 142, holding that the fraud and deceit must have been the gravamen of the action.

Gaddy v. Witt (Tex. Civ. App.), 27 Am. B. R. 457.

In re Shepardson (D. C. Vt.), 34 Am. B. R. 284; 220 Fed. 186.

Judgment for libel.

National Surety Co. v. Medlock (Ga. Ct. of App.), 19 Am. B. R. 654. McDonald v. Brown, 10 Am. B. R. 58.

A judgment for costs in action for slander is a liability created wholly by statute and is dischargeable.

Drake v. Vernon (So. Dak. Sup. Ct.), 25 Am. B. R. 69.

*Contra.* In re Dowie (D. C. N. Y.), 29 Am. B. R. 338; 202 Fed. 816.

Judgment on forfeited bail bond.

In re Weber (N. Y. Ct. of App.), 32 Am. B. R. 730; 212 N. Y. 290; aff'g 159 App. Div. (N. Y.) 902; 143 N. Y. Supp. 1149.

Fine by State court.

People ex rel. Otterstedt v. Sheriff, Kings County, 31 Am. B. R. 84; 206 Fed. 566.

Judgment for fraud under Section 17 means positive fraud, not implied fraud.

It must involve moral turpitude.

L. and N. R. R. Co. v. Bryant (Ky. Ct. of App.), 28 Am. B. R. 867.

Claim for legal services obtained by false representation not within Section 17-a (2); not regarded as property.

Gleason v. Thaw (C. C. A. 2nd Cir.), 28 Am. B. R. 473; 196 Fed. 359; 116 C. C. A. 179; aff'd, s. c. 34 Am. B. R. 177; 236 U. S. 558; 59 L. Ed. 717.

Obtaining property by false pretenses. Action for deceit may be thereafter brought.

*Talcott v. Friend et al.* (C. C. A. 7th Cir.), 24 Am. B. R. 708; 179 Fed. 676; 103 C. C. A. 80; *aff'd*, *Friend v. Talcott* (U. S. Sup.), 30 Am. B. R. 31; 228 U. S. 27; 57 L. Ed. 718.

Wilful and malicious injury under Section 17-a (2).

What constitutes malice.

*In re Munro* (D. C. N. Y.), 28 Am. B. R. 369; 195 Fed. 817; and on rehearing, s. c. 28 Am. B. R. 664; 197 Fed. 450.

Obtaining property by false pretenses or false representations.

*J. K. Orr Shoe Co. v. Upshaw and Powledge*, 30 Am. B. R. 534.

*Atlanta Skirt Mfg. Co. v. Jacobs*, 25 Am. B. R. 895.

Embezzlement and misappropriation of funds, in a fiduciary capacity.

*Watertown Carriage Co. v. Hall* (N. Y. Ct. of App.), 11 Am. B. R. 15; *aff'g* 10 Am. B. R. 23.

*In re Butts*, 10 Am. B. R. 16; 120 Fed. 966.

*Tindle v. Birkett*, 18 Am. B. R. 121; 205 U. S. 183; 51 L. Ed. 762.

*Harper v. Rankin* (C. C. A. 4th Cir.), 15 Am. B. R. 608; 141 Fed. 623; 72 C. C. A. 320; *aff'g In re Harper* (D. C. Va.), 13 Am. B. R. 430; 133 Fed. 970.

An "officer" of a corporation.

*In re Gulick* (D. C. N. Y.), 26 Am. B. R. 362; 186 Fed. 350.

See, *In re Wenman* (D. C. N. Y.), 16 Am. B. R. 690; 153 Fed. 910.

"Fiduciary capacity," definition of.

*Karger v. Orth* (Sup. Ct. Minn.), 27 Am. B. R. 212.

*In re Adler* (C. C. A. 2nd Cir.), 18 Am. B. R. 240; 152 Fed. 422; 81 C. C. A. 564.

*In re Camelo*, 28 Am. B. R. 353; 195 Fed. 632.

*Keefauver v. Hevenor* (N. Y. App. Div.), 32 Am. B. R. 580; 163 App. Div. (N. Y.) 531; 148 N. Y. Supp. 434.

*Crawford v. Burke*, 195 U. S. 176; 49 L. ed. 147; 12 Am. B. R. 659.

Misappropriation of partnership funds.

*Inge v. Stillwell* (Kas. Sup. Ct.), 28 Am. B. R. 892.

Failure of agent to account for proceeds of property sold, not within section.

*American Agricultural Chemical Co. v. Berry* (Me. Sup. Ct.), 31 Am. B. R. 142.

*Contra. Williams v. Virginia-Carolina Chemical Co.* (Ala. Sup. Ct.), 31 Am. B. R. 64.

Judgment for alienation of affections.

*Leicester v. Hoadley*, 9 Am. B. R. 318; 66 Kan. 172; 71 Pac. 318.

Judgment for Crim. Con. (N. Y. Stat.).

*Tinker v. Colwell* (U. S. Sup.), 11 Am. B. R. 568; 193 U. S. 473; 48 L. Ed. 754; *aff'g* 7 Am. B. R. 334; 169 N. Y. 531.

Judgment in parents' action for seduction of daughter.

*In re Freche*, 6 Am. B. R. 479; 109 Fed. 620.

See, *In re Sullivan*, 2 Am. B. R. 30.

Judgment for breach of promise where there is no allegation of seduction in complaint.

*Bond v. Milliken*, 17 Am. B. R. 811; 109 N. W. 774.

*Finegan v. Hull* (N. Y. Sup. Ct.), 6 Am. B. R. 648; 35 Misc. (N. Y.) 773.

When coupled with an allegation of seduction not dischargeable and form of judgment immaterial.

*In re Warth* (C. C. A. 2nd Cir.), 29 Am. B. R. 210; 200 Fed. 408; 118 C. C. A. 560; *rev'g*, s. c. 28 Am. B. R. 41; 196 Fed. 571.

*In re Grounds* (D. C. N. Y.), 32 Am. B. R. 774; 215 Fed. 280.

*In re Maples* (D. C. Mont.), 5 Am. B. R. 426; 105 Fed. 919.

*Contra.* Disler v. McCauley (N. Y. App. Div.), 7 Am. B. R. 138; 66 App. Div. (N. Y.) 42; rev'g 6 Am. B. R. 491.

**Arrears of alimony.**

Craine v. Craine (Ky. C. C.), 19 Am. B. R. 76.

Not affected by discharge.

Young v. Young (N. Y. Sup. Ct.), 7 Am. B. R. 171; 35 Misc. (N. Y.) 335.

Turner v. Turner, 6 Am. B. R. 289; 108 Fed. 785.

Not dischargeable.

Maier v. Maier (N. Y. App. Term.), 28 Am. B. R. 856; 77 Misc. (N. Y.) 145.

*Contra.* Arrington v. Arrington (No. Car. Sup. Ct.), 10 Am. B. R. 103.

Judgment for alimony in New York State enforcing a foreign judgment for alimony not dischargeable.

In re Williams et al. (N. Y. Ct. of App.), 31 Am. B. R. 717; 208 N. Y. 32; aff'g 152 App. Div. (N. Y.) 385; 136 N. Y. Supp. 707.

Contract with divorced wife for support not released.

Dunbar v. Dunbar (U. S. Sup.), 10 Am. B. R. 139; 190 U. S. 340; aff'g 180 Mass. 170.

FORM No. 275.

EXCEPTIONS TO SPECIFICATIONS.

United States District Court,  
 ..... District of .....  
 In Bankruptcy.

<p style="text-align: center;">IN THE MATTER                  OF                  .....  <i>Bankrupt.</i></p>	}	No.....
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....., the bankrupt herein, by ....., his attorney,  
 hereby excepts to the specifications filed herein in behalf of .....,  
 as follows:

1. He excepts to the first of the said specifications on the ground that the same is indefinite, insufficient, and does not state an offense under the United States Bankruptcy Act which would be a bar to the discharge of the bankrupt, to wit:

.....

2. He excepts to the specification numbered "....." on the ground that the allegations contained in the same do not contain any specific averment of fact; that the said specification is vague, indefinite and general; that the said specification does not raise any issue that can be met by the bankrupt herein, as the said specification fails to state what statements were made by the bankrupt which are stated to have been knowingly false when made.

3. That the said specifications hereinbefore excepted to should be dismissed and stricken out.

Dated ....., 19...

.....  
*Counsel for bankrupt,*  
 ..... Street,  
 .....

NOTES.

In re Wittenberg, 20 Am. B. R. 398; 160 Fed. 991.  
 Failure to except waives defects.

In re Baerncopf, 9 Am. B. R. 133; 117 Fed. 975.

See, In re Crist, 9 Am. B. R. 1; 116 Fed. 1007.

Insufficiency of specifications in stating any statutory ground of objection to discharge, not waived by failure of bankrupt to except thereto.

In re McCarthy (D. C. N. Y.), 22 Am. B. R. 498; 170 Fed. 859.

Practice in Western District of Kentucky.

In re Daugherty, 26 Am. B. R. 550; 189 Fed. 239.

**FORM No. 276.**

**PETITION TO AMEND SPECIFICATIONS.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

To the District Court of the United States for the ..... District  
of .....

The petition of ..... respectfully shows:

1. That he is an objecting creditor herein, whose claim has been duly filed  
and allowed.

2. That ..... was duly adjudicated herein on the .....  
day of ....., 19.., and thereafter on the ..... day of .....,  
19.., filed his petition praying for a discharge from his debts.

3. That your petitioner on the ..... day of .....,  
19.., duly filed specifications of objection to such discharge upon the following  
grounds:

First: .....

Second: .....

4. That the bankrupt has excepted to the specification numbered .....  
on the ground that "same is indefinite, too general and does not make  
sufficient averment of fact."

5. That since your petitioner verified and filed his said specifications,  
additional facts as to the bankrupt's acts, conduct and property, have come to



his knowledge, and petitioner is desirous of amending his said specifications in the following particulars:

- a. By adding more specific averments of fact to specifications numbered .....
- b. By adding to said specifications, a new specification based upon the following facts discovered by petitioner since the filing of said specifications.
6. That no previous application has been made for this order.

Wherefore, your petitioner respectfully prays for an order permitting him to amend his said specifications as above set forth, and for such other and further relief as may be just and proper.

.....,  
*Petitioner.*

[Verification.]

NOTES.

**Amendments of specifications.**

- In re Quackenbush, 4 Am. B. R. 274; 102 Fed. 282.
- In re Carley, 8 Am. B. R. 720; 117 Fed. 130.
- In re Hixon, 1 Am. B. R. 610; 93 Fed. 440.
- In re Morgan, 4 Am. B. R. 402; 101 Fed. 982.
- In re Mudd, 5 Am. B. R. 242; 105 Fed. 348.
- In re Nathanson, 18 Am. B. 252; 152 Fed. 585.
- In re Osborne (C. C. A. 1st Cir.), 8 Am. B. R. 165; 115 Fed. 1; 52 C. C. A. 595.
- In re Hendrick, 14 Am. B. R. 795; 138 Fed. 473.
- In re Wittenberg, 20 Am. B. R. 398; 160 Fed. 991.
- In re Holman, 1 Am. B. R. 600; 92 Fed. 512.
- In re Glass, 9 Am. B. R. 391; 119 Fed. 509.
- In re Hanna (C. C. A. 2nd Cir.), 21 Am. B. R. 843; 168 Fed. 238; 93 C. C. A. 452.
- When conforming to proof should be permitted.
- In re Mintzer, 28 Am. B. R. 743; 197 Fed. 647.
- Motions to amend should be made before the judge.
- In re Peck, 9 Am. B. R. 747; 120 Fed. 972.
- Referee no power to grant. In re Wolfensohn, 5 Am. B. R. 60. In re Kaiser, 3 Am. B. R. 767; 99 Fed. 689.
- When amendment not allowed.
- In re Bromley, 18 Am. B. R. 227; 152 Fed. 493.
- When there has been laches.
- Kentucky Nat. Bank v. Carley (C. C. A. 3rd Cir.), 10 Am. B. R. 375; 121 Fed. 822; 58 C. C. A. 158.
- Adding a new issue not embraced within original specifications and when the time limited by General Order XXXII has expired.
- In re Johnson (D. C. So. Dak.), 27 Am. B. R. 644; 192 Fed. 356.
- Objections to sufficiency waived unless made before trial.
- In re Osborne (C. C. A. 1st Cir.) (*supra*).
- In re Baldwin, 9 Am. B. R. 591; 119 Fed. 796.
- In re Servis, 15 Am. B. R. 271; 140 Fed. 222.
- In re Baerncof, 9 Am. B. R. 133; 117 Fed. 975.
- Contra.* In re Crist, 9 Am. B. R. 1; 116 Fed. 1007.

## FORM No. 277.

**ORDER AUTHORIZING TRUSTEE TO FILE OBJECTIONS TO  
BANKRUPT'S DISCHARGE.**

District Court of the United States,  
 ..... District of .....  
 In Bankruptcy.

IN THE MATTER	}	No. ....
OF		
..... <div style="text-align: right;"><i>Bankrupt.</i></div>		

..... Trustee in bankruptcy herein having made application for leave to interpose objections to the discharge of the bankrupt herein and a meeting of creditors having been duly called and held herein and the said creditors having voted at said meeting to authorize the trustee to file such objections, it is on motion of ....., attorney for said trustee,

Ordered, that ..... trustee herein be and he hereby is authorized to interpose specifications of objection to the discharge of the bankrupt herein.

Dated ....., 19... ..

.....,  
*Referee in Bankruptcy.*

## NOTES.

**When trustee may file specifications. Sec. 14-b (6).**

When trustee may file "as a party in interest."

In re Levey, 13 Am. B. R. 312; 133 Fed. 572.

In re Hockman (D. C. Pa.), 30 Am. B. R. 921; 205 Fed. 330.

What authorization necessary.

In re Reiff, 29 Am. B. R. 753; 205 Fed. 399.

Power of referee to impose terms.

In re Churchill (D. C. Wis.), 28 Am. B. R. 603; 197 Fed. 114.

## FORM No. 278.

## ORDER OF REFERENCE TO SPECIAL MASTER.

United States District Court,  
for the ..... District of .....  
In Bankruptcy.

IN THE MATTER OF  ..... <i>Bankrupt.</i>	}	No.....
--	---	---------

Application having been made by the above named bankrupt for a discharge herein and a hearing held thereon, and ....., a creditor of said bankrupt, having appeared by ..... Esq., his attorney, in opposition, and filed specifications of objection thereto; now, on motion of ..... Esq., attorney for ....., it is

Ordered, that the issues raised by such application and such specifications of objection be referred to ..... Esq., as special master, for examination, testimony and report.

Witness, the Honorable ....., Judge of the said court, and the seal thereof, at the City of ....., in said district on the ..... day of ....., 19...

.....,  
D. J.

## NOTES.

**Reference to special master.**

See sec. 38-a, (4).

**General Order, XII, (3).**

Referee as such, no jurisdiction.

Therefore it is almost universal to refer contested discharges to him as Special Master to hear and report.

In Southern district of New York and other districts, the order of reference is stamped on the papers, in others an order of reference as above is used.

Fellows v. Freudenthal, 4 Am. B. R. 490; 102 Fed. 731; In re McDuff, 4 Am. B. R. 110; 101 Fed. 241; In re Rauchenplat, 9 Am. B. R. 763.

In re Johnson, 19 Am. B. R. 814; 158 Fed. 342.

In re Elby, 19 Am. B. R. 734; 157 Fed. 935.

Judge may in his discretion appoint a person other than the referee in charge of proceeding to hear same.

In re Gillardon (D. C. Pa.), 26 Am. B. R. 103; 187 Fed. 289.

Special Master may pass on relevancy of testimony or materiality of evidence.

In re Kaiser, 3 Am. B. R. 767; 99 Fed. 689.

Special Master entitled to reasonable compensation.

In re Gillardon (*supra*).

### FORM No. 279.

#### NOTICE OF HEARING BEFORE SPECIAL MASTER.

United States District Court,

..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No.....

.....  
*Bankrupt.*

Please take notice that the issues raised by the specifications of objection to the discharge of the above named bankrupt, filed by ....., have been duly referred to ....., Esq., as special master (or referee) for examination, testimony and report and that a hearing will be held upon said specifications at the office of the said special master (or referee) No. ...., City of ....., on the ..... day of ....., 19..., at ..... o'clock ... M., and a motion made to dismiss the said specifications, and for such other and further relief as to the court may seem just and proper.

Dated ....., 19...

.....  
*Attorney for bankrupt,*

..... Street,

City of .....

To

.....Esq.,

*Attorney for creditors,*

.....

## NOTES.

In the Eastern District of New York it is the duty of the objecting creditors to bring on the hearing before special master. See Rule XLI, Eastern District, New York.

In re Eldred, 18 Am. B. R. 243; 152 Fed. 491.

By rule XIII in Southern District of New York the bankrupt must bring on the hearing within 30 days.

**Evidence.**

Upon the hearing, the testimony of witnesses other than the bankrupt himself taken at first meeting or elsewhere is inadmissible in support of specifications.

In re Wilcox (C. C. A. 2nd Cir.), 6 Am. B. R. 362; 109 Fed. 628; 48 C. C. A. 567.

See, In re Magen & Magen (D. C. Pa.), 33 Am. B. R. 346; 218 Fed. 692.

Such testimony of bankrupt is admissible as admissions against interest.

In re Goodhile, 12 Am. B. R. 380; 130 Fed. 782.

In re Leslie, 9 Am. B. R. 561; 119 Fed. 406.



## FORM No. 280.

## REPORT OF SPECIAL MASTER ON SPECIFICATIONS.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER	}	No. ....
OF		
..... <i>Bankrupt.</i>		

To the Honorable ....., Judge of the District Court of the United States in said District:

I, the undersigned, referee in bankruptcy, to whom as special master the issues upon the specifications herein were duly referred, to ascertain and report the facts, respectfully report as follows:

That the said issues were brought on for hearing, and I was attended upon said hearing by the counsel for the opposing creditor and the counsel for the bankrupt, and that testimony was adduced thereon, the stenographic minutes of which are herewith filed. That the specifications were filed on behalf of ....., a creditor, and are substantially as follows:

1. That the said bankrupt knowingly and fraudulently concealed from his trustee, etc., property belonging to his estate in bankruptcy, to an amount of about \$....., alleged to have been realized by him from the sale of stock bequeathed him.

2. That he knowingly and fraudulently concealed, etc., other property belonging to his said estate in bankruptcy, consisting of his salary of \$..... per year, paid to his wife and alleged to have been held by her for said bankrupt.

3. That he knowingly and fraudulently made false oath in these proceedings in omitting from his schedules, the above mentioned property.

4. With intent to conceal his true financial condition and in contemplation of bankruptcy, he destroyed certain records, etc.

5. That with like intent and in like contemplation, he failed to keep books of account, etc.

6. Knowingly and fraudulently made false oath in omitting from his schedules \$. . . . . alleged to have been in his possession or under his control.

The testimony shows, in substance, that in or about the year . . . . . the bankrupt received by bequest the following: . . . . .

. . . . . that he disposed of said property from time to time and received therefor about \$. . . . . The bankrupt testified as follows: . . . . .

. . . . . The bankrupt's wife testified as follows: . . . . .

### *Findings of Fact.*

The only witnesses produced were the bankrupt and his wife, and their testimony is uncontradicted. There is therefore, no direct evidence that any other disposition was made of the property than to which the bankrupt testified, and the claim that that amount or any considerable part of it, is still in the bankrupt's possession seems to rest chiefly upon the improbability of their testimony. No attempt was made to contradict the statement of losses in stock speculation by calling the broker through whom said speculations were had, or other witnesses. The bankrupt's account in the . . . . . Bank tends to corroborate his testimony, showing, as it does, that he expended over \$. . . . . between . . . . ., 19.. and . . . . ., 19.., during which period he had no source of income excepting this bequest, and his stock speculations.

I recall nothing in the testimony before me which would justify a finding of fact that any part of the proceeds of this property is in the hands of the bankrupt and concealed from his trustee, and the same remark applies to the sum of \$. . . . . or less which the bankrupt received as the proceeds of real estate devised to him by his father.

I am confirmed in this opinion by the statement in the schedules in which of the total liabilities, over \$. . . . . appears to have been for money borrowed by the bankrupt, and with the exception of \$. . . . . borrowed by the bankrupt during the year 19. . . .

In regard to the payment of the bankrupt's salary to his wife, the testimony of both the bankrupt and his wife is as follows: . . . . .

The bankrupt did not, it appears, keep books of account, but inasmuch as the

testimony shows that prior to his present employment, he was in no business, and that in his present employment on a salary there seems to be no occasion for keeping a set of books, I do not think his failure to keep such books can be considered as militating against his discharge.

So also as to the alleged destruction of the books referred to in the fourth and fifth specifications; while the bankrupt admits that he destroyed some memoranda of stock transactions, I see no evidence from that fact, or elsewhere in the testimony before me, of any intent on his part to conceal his true financial condition by so doing.

### *Conclusions of Law.*

For the foregoing reasons, I am of the opinion that the specifications have not been sustained, and that the bankrupt is entitled to his discharge.

All of which is respectfully submitted.

Dated . . . . ., 19...

.....,

*Referee in bankruptcy, as  
Special Master.*

[Contra, if findings of fact against bankrupt.]

In Southern District of New York "Record on Objections to Discharge" should be arranged as follows:

1. Appearances.
2. Specifications.
3. Exceptions (if any).
4. Notice of Hearing and Proof of Service.
5. Testimony.
6. Report.

### NOTES.

#### **Report of referee or special master.**

Referee should find the facts and state his conclusions of law.

In re Steed and Curtis, 6 Am. B. R. 73; 107 Fed. 682.

When insufficient.

In re Lenweaver (D. C. N. Y.), 36 Am. B. R. 73; 226 Fed. 987.

Special Master should pass upon all the grounds of objection set forth in specifications.

In re Haskell (D. C. N. Y.), 20 Am. B. R. 914; 164 Fed. 301.

Duty to hear the testimony of witnesses.

In re Rubin & Lipman (D. C. N. Y.), 32 Am. B. R. 295; 215 Fed. 669.

Should not base a finding upon the original examination of the bankrupt before him as referee.

In re Murray (D. C. Conn.), 20 Am. B. R. 700; 162 Fed. 983.

Duty to exercise independent judgment thereon.

In re Cohen (D. C. N. J.), 26 Am. B. R. 544; 192 Fed. 751.

In Southern District of New York it is referee's duty to take and report the testimony with rulings thereon, and he may reserve decision as to admissibility of testimony in certain cases.

In re Knaszak, 18 Am. B. R. 187; 151 Fed. 503.

When exceptions to report of Special Master should be filed. (Washington Rule.)

In re Pierce, Jr., 32 Am. B. R. 96; 210 Fed. 389.

Rules governing in Connecticut.

In re Walder, 18 Am. B. R. 419; 152 Fed. 489.

**FORM No. 281.**

**ORDER OPENING DEFAULT ON DISCHARGE PROCEEDING.**

At a Stated Term of the United States  
District Court for the .....  
District of ....., held at the  
United States Court House, City of ....  
..., on the ..... day of ....  
....., 19...

Present:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

No.....

.....  
*Bankrupt.*

A motion having been made to reopen the default herein and to restore the bankrupt's application for discharge to the calendar of this court, and the same having come on for hearing, now, upon reading and filing the petition of ....., bankrupt herein, duly verified, the notice of motion and the petition for discharge herein, dated ....., 19..., and the order to show cause thereon and all the proceedings heretofore had herein, and after hearing ....., attorney for said bankrupt in support of said motion, and ..... in opposition thereto, it is on motion of ....., attorney for bankrupt,

Ordered, that the application for discharge herein be and hereby is re-opened and the clerk of this court directed to restore same to the call calendar for discharges for ....., 19..., with leave to creditors who have filed notices of appearance herein, to file specifications of objection upon the merits.

.....,  
*D. J.*

FORM No. 282.

**ORDER DENYING DISCHARGE UPON REPORT OF SPECIAL MASTER.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No.....
---	---	---------

Application having been made by ....., a bankrupt, for a discharge herein, and specifications of objection having been filed thereto by ....., a creditor and party in interest, and such specifications having been referred to ..... Esq., as special master, to ascertain and report the facts with his opinion, and such special master having filed his report dated ....., 19..., and recommended that such specifications be sustained, (and exceptions to such report having been duly filed by said bankrupt, and the same having been argued) ; and after hearing ....., Esq., attorney for such objecting creditor, for the motion, and ....., Esq., attorney for the bankrupt, in opposition thereto, now on motion of ....., attorney for the objecting creditor, it is

Ordered, that the report of the said special master be, and it hereby is in all respects confirmed ;

That the specifications of objection of ....., a creditor and party in interest herein, be, and the same hereby are sustained ;

That the application for discharge of the said ....., bankrupt, be, and the same hereby is denied.

.....,  
*D. J.*

NOTES.

Findings of Special Master upon conflicting testimony not disturbed where there is sufficient testimony to support the findings.

In re Forth (D. C. N. Y.), 18 Am. B. R. 186; 151 Fed. 95.

In re Knaszak (D. C. N. Y.), 18 Am. B. R. 187; 151 Fed. 503.

Exceptions to report of Special Master must be filed within 20 days as per Equity Rules. Rule 66 (Rule in Washington.)

In re Pierce, Jr., 32 Am. B. R. 96; 210 Fed. 389.

International Harvester Co. v. Carlson (C. C. A. 8th Cir.), 33 Am. B. R. 178; 217 Fed. 736; 133 C. C. A. 430.



Costs in discharge proceedings.

In re Kyte (D. C. Pa.), 26 Am. B. R. 507.

Bragassa v. St. Louis Cycle, 5 Am. B. R. 700; 107 Fed. 77.

In re Miers (D. C. N. Y.), 27 Am. B. R. 870.

In re Amer et al., 228 Fed. 576.

**FORM No. 283.**

**PETITION FOR EXTENSION OF TIME TO APPLY FOR DISCHARGE.**

United States District Court,

..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No.....

.....  
*Bankrupt.*

To the Honorable .....,

*District Judge:*

Your petitioner respectfully shows:

That he is the bankrupt herein.

That more than twelve and less than eighteen months have elapsed since the  
..... day of ....., 19..., the date petitioner was adjudicated  
bankrupt.

That he was unavoidably prevented from filing an application for a discharge within twelve months after such adjudication for the following reasons:

[State specifically.]

.....  
.....  
That he desires to file such application and obtain a discharge.

That no previous application has been made for the order hereinafter asked.

Wherefore, your petitioner prays for an order extending his time to file such petition for discharge until the expiration of eighteen months from the date of such adjudication.

Dated ....., 19...

.....  
*Petitioner.*

[Verification.]

**FORM No. 284.**

**REFEREE'S CERTIFICATE ON APPLICATION FOR EXTENSION OF TIME.**

In the District Court of the United States for the ..... District  
of .....  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	<p>No.....</p>
---	----------------

To the Honorable ....., District Judge:

I, ....., referee in bankruptcy in charge of this proceeding, do hereby certify:

That the above-named bankrupt was adjudicated herein on the ..... day of ....., 19...

That, from the files and records of such proceeding and any information possessed by me, there appears no reason why such bankrupt's petition for an extension of time to file application for a discharge should not be granted; and that, in my opinion, such bankrupt has not been guilty of laches in applying for his discharge.

I, therefore, recommend that his petition for extension of time be granted.

Dated ....., 19...

.....  
*Referee in Bankruptcy.*

**NOTE.**

Such certificate proper, but not necessary to the application.

**FORM No. 285.**

**ORDER EXTENDING TIME TO APPLY FOR DISCHARGE.**

In the District Court of the United States for the ..... District  
of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

A petition praying for an extension of time to apply for discharge, as provided in § 14-a of the Bankruptcy Act, having been filed by the above-named bankrupt showing that he was unavoidably prevented from applying for such discharge within twelve months from the adjudication and that less than eighteen months have expired, (and an order to that effect having been recommended by ....., Esq., the referee in bankruptcy in charge of this proceeding); now, on motion of ..... Esq., attorney for said bankrupt,

It is ordered:

That the time of ....., the bankrupt herein, to apply for a discharge be, and the same hereby is, extended for ..... days from the ..... day of ....., 19...

Witness, the Honorable ....., Judge of the said court, and the seal thereof, at the city of ....., in said district, on the ..... day of ....., 19...

.....  
D. J.

NOTES.

Petition for leave to file after expiration of time limit must show that bankrupt was unavoidably prevented during whole period in which he should apply.

*In re Harris & Algor*, 15 Am. B. R. 705.

*In re Churchill* (D. C. Wis.), 28 Am. B. R. 607; 197 Fed. 111.

Jurisdiction to hear an application for discharge after expiration of time limit cannot be conferred by consent.

*In re Taylor*, 26 Am. B. R. 143; 188 Fed. 479.

Nor by *nunc pro tunc* order after 18 months.

*In re Taunton*, 33 Am. B. R. 308; 216 Fed. 987.

"Overlooked by attorney," not sufficient.

*In re Anderson*, 14 Am. B. R. 221; 134 Fed. 319.

In re Lewin, 14 Am. B. R. 358; 135 Fed. 252.

Application denied.

In re Daly, 30 Am. B. R. 475; 205 Fed. 1002.

Proof of allegations of petition should be given before the referee.

In re Glickman & Pisonoff (D. C. Pa.), 21 Am. B. R. 171; 164 Fed. 209.

Notice to creditors of application unnecessary in Eastern District of New York.

In re Fritz, 23 Am. B. R. 84; 173 Fed. 560.

[So, also, in many other districts.]

Grounds for application.

In re Casey, 28 Am. B. R. 359 and footnote; 195 Fed. 322.

Remedy where court has permitted filing after statutory time has expired.

In re Haynes & Sons, 10 Am. B. R. 13; 122 Fed. 560.

See, In re Fahy, 8 Am. B. R. 354; 116 Fed. 239.

See, In re Bimberg, 9 Am. B. R. 601; 121 Fed. 942.

### FORM No. 286.

#### PETITION TO REVOKE DISCHARGE.

United States District Court,

for the ..... District of .....:

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

To Hon. ...., Judge of the District Court of the United States for the ..... District of .....:

The petition of ..... respectfully shows and alleges:

1. That he is a creditor herein whose claim has been filed and allowed at the sum of \$. .... and is affected by the discharge herein.

2. That on the ..... day of ....., 19..., the above named ..... was duly adjudged a bankrupt in this court and thereafter was discharged from his debts by order dated the ..... day of ....., 19..., and that one year has not yet expired.

3. That since the granting of said discharge, the following facts have come to the knowledge of petitioner:

[Here set forth specifically facts constituting ground for revoking discharge.]

That petitioner's sources of information are as follows: .....

.....  
.....

4. Your petitioner alleges that the actual facts as above set forth did not warrant the discharge of said bankrupt and that said discharge was obtained through the fraud of the bankrupt.

5. That petitioner had no knowledge of the actual facts as above set forth at the time of the granting of the bankrupt's discharge.

6. That no previous application has been made for the order herein.

Wherefore your petitioner prays for an order revoking and setting aside on the ground of fraud the discharge of the said ....., bankrupt, and for such other and further relief as may be just and proper in the premises.

.....,  
*Petitioner.*

[Verification.]

**FORM No. 287.**

**ORDER REVOKING DISCHARGE.**

At a Stated Term of the District Court  
of the United States for the .....  
District of ....., held at the  
Court House, City of ....., on  
the ..... day of .....,  
19...

Present:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

....., a creditor with a provable claim herein, having filed a petition duly verified, praying that the discharge of the above named bankrupt granted on the ..... day of ....., 19..., be revoked and set aside for fraud of said bankrupt in obtaining said discharge, and the said bankrupt having filed his verified answer thereto and the matter having been duly heard before this court,

Now, upon reading and filing the petition of ....., a creditor herein, verified the ..... day of ....., 19..., and the answer of



said bankrupt, verified the ..... day of ....., 19..., and after hearing ..... in support of said motion and ..... in opposition thereto, and sufficient cause appearing to me therefor, it is

Ordered, adjudged, and decreed that the discharge granted herein to....  
..... on the ..... day of ....., 19..., be and hereby is  
revoked and set aside and the proceeding reinstated.

.....  
D. J.

#### NOTES.

##### **Revoking discharge.**

##### **Sec. 15.**

Cross references Sec. 2, (12), 14, 21-f, 29-b, 64-c.

Who may apply.

Parties in interest.

##### **Within one year after discharge.**

In re Bimberg, 9 Am. B. R. 601; 121 Fed. 942.

In re Hawk, 8 Am. B. R. 71; 114 Fed. 916.

Kentucky Nat. Bank of Louisville v. Carley (C. C. A. 3rd Cir.), 12 Am. B. R. 119;  
127 Fed. 686; 62 C. C. A. 412.

In re Wright, 24 Am. B. R. 437; 177 Fed. 578.

##### **Upon a trial.**

Hearing before the judge or special master is a trial.

##### **Obtained through the fraud of the bankrupt.**

Fraud only ground for revocation.

In re Meyers (D. C. N. Y.), 3 Am. B. R. 722; 100 Fed. 775.

In re Roosa, 9 Am. B. R. 531; 119 Fed. 542.

In re Hansen, 5 Am. B. R. 747; 107 Fed. 252.

In re Hoover, 5 Am. B. R. 247; 105 Fed. 354.

In re Griffin Bros., 19 Am. B. R. 78; 154 Fed. 537.

Actual fraud theretofore knowingly practiced by the bankrupt.

In re Wright (*supra*).

##### **Knowledge of the fraud, etc.—Essential and jurisdictional.**

Restricted to frauds discovered since entry of order of discharge.

Corrupt agreement with creditor.

In re Dietz, 3 Am. B. R. 316; 97 Fed. 563.

When application denied.

In re Fritz, 23 Am. B. R. 84; 173 Fed. 560.

In re Lasch, 15 Am. B. R. 629; 142 Fed. 277.

##### **"Not guilty of undue laches."**

In re Hawk (C. C. A. 8th Cir.), 8 Am. B. R. 71; 114 Fed. 916; 52 C. C. A. 536.

In re Upson, 10 Am. B. R. 758; 124 Fed. 980.

In re Oleson, 7 Am. B. R. 22; 110 Fed. 796.

Arrington v. Arrington, 13 Am. B. R. 89; 132 Fed. 200.

In re Griffin Bros., 19 Am. B. R. 78; 154 Fed. 537.

In re Mauzy, 21 Am. B. R. 59; 163 Fed. 900.

In re Downing (D. C. N. Y.), 28 Am. B. R. 778; 199 Fed. 329.

##### **"Facts did not warrant the discharge."**

In re Toothaker Bros., 12 Am. B. R. 99; 128 Fed. 187.

**Practice.**

*In re Meyers (supra).*

*In re Oliver*, 13 Am. B. R. 582; 133 Fed. 832.

Petitioners must have provable claims.

*In re Chandler* (C. C. A. 7th Cir.), 14 Am. B. R. 512; 138 Fed. 637; 71 C. C. A. 87.

Requisites of petition.

*In re Cuthbertson* (D. C. So. Dak.), 29 Am. B. R. 823; 202 Fed. 266.

*In re Downing (supra).*

*In re Walsh* (D. C. N. Y.), 32 Am. B. R. 521; 213 Fed. 643.

Amendment of petition.

*In re Oliver (supra).*

**Effect of revocation.**

*In re Shaffer*, 4 Am. B. R. 728; 104 Fed. 982.

No collateral attack.

*In re Shaffer (supra).*

*Custard v. Wiggerson*, 17 Am. B. R. 337; 130 Wis. 412.

District court has no jurisdiction to entertain a suit in equity collaterally attacking and seeking to set aside a discharge. Sec. 15 of Act is exclusive

*Atlantic Dynamite Co. v. Reger*, 29 Am. B. R. 659; 200 Fed. 1002.

## FORM No. 288.

**AFFIDAVIT FOR CANCELLATION OF A JUDGMENT AGAINST BANKRUPT (NEW YORK PRACTICE).**

..... Court,  
 of .....  
 ..... County.

In the matter of the application	}
of	
.....,	
a Bankrupt, to have a certain Judgment of ..... cancelled and discharged of Record.	

STATE OF ..... }  
 County of ..... } ss.:

..... being duly sworn, deposes and says:

1. That on the ..... day of ....., 19.., in this court ..... recovered a judgment against deponent for the sum of \$....., and same was duly docketed in the office of the county clerk of the county of ..... That the debt upon which said judgment was obtained, was not created by fraud, nor such as would not be dischargeable in bankruptcy.

2. That on the ..... day of ..... 19.., deponent was duly adjudicated a bankrupt in the district court of the United States for the ..... district of ....., and thereafter on the ..... day of ....., 19.., was duly discharged of his debts in said court and a copy of said certificate of discharge is hereto annexed marked, Exhibit "A."

3. That more than one year has elapsed since the entry of said order of discharge.

4. That the debt evidenced by judgment of ..... aforesaid was duly scheduled in said bankruptcy proceedings, a copy of which schedules is hereto annexed, marked Exhibit "B," and deponent was discharged therefrom.

5. That said judgment still stands of record in this court against deponent.

6. No previous application has been made for the order asked for herein.

Therefore deponent asks that said judgment of ..... be cancelled and discharged of record.

Sworn to before me this  
 ..... day of ....., 19... }  
 [Annex exhibits.]

.....,

## FORM No. 289.

## ORDER CANCELLING JUDGMENT OF RECORD.

At a Special Term, etc., held at the  
Court House in the City of .....  
on the ..... day of .....  
19...

Present:

Hon. ....,  
*Justice.*

IN THE MATTER

OF

the application of .....  
a bankrupt to have a certain judg-  
ment of ..... cancelled  
and discharged of record.

On reading and filing the affidavit of ....., verified the  
..... day of ....., 19..., to which is annexed a certificate of  
the District Court of the United States for the ..... District of ....  
....., dated ....., 19..., discharging the said .....  
from his debts in bankruptcy pursuant to the Acts of Congress relating to  
bankruptcy, by which affidavit it appears that a certain judgment rendered  
in the ..... Court on the ..... day of ....., 19...,  
in favor of ..... as plaintiff against ....., as defendant  
for \$. ...., the judgment roll whereon was filed and said judgment  
docketed in the office of the Clerk of the County of ....., on the  
..... day of ....., 19..., was discharged by said order of dis-  
charge in bankruptcy and it appearing that more than one year has elapsed  
since the entry of said order of discharge and that the debt upon which said  
judgment was obtained was not created by fraud nor such as would not be  
dischargeable in bankruptcy and that due notice of this application has been  
given to the said ..... judgment creditor together with copies of  
the papers upon which it is made, now, on motion of ..... Esq.,  
attorney for the said ..... and no one appearing in opposition  
thereto, it is hereby

Ordered, that the said judgment be and the same is hereby cancelled and  
discharged of record.

Enter.

.....  
J.

## NOTES.

**Cancellation and Discharge of Judgment against Bankrupt (New York Practice). Consolidated Laws "Debtor and Creditor Law," Chap. 12, Sec. 150, replacing Sec. 1268, Code of Civil Procedure.**

Notice of motion with copies of all papers must be served on judgment creditor or his attorney of record.

Provisions mandatory.

Arnold v. Oliver, 64 How. 452. Eberspacher v. Boehm, 11 N. Y. Supp. 404. Firestone Tire & Rubber Co. v. Agnew et al. (N. Y. Ct. of App.), 194 N. Y. 165; 21 Am. B. R. 292.

New York Institution, etc. v. Crockett, 117 App. Div. (N. Y.) 269; 17 Am. B. R. 233.

Hussey v. Judson, 11 Am. B. R. 521; 43 Misc. (N. Y.) 370.

Applies to judgment entered after discharge upon provable debt.

Walker v. Muir (N. Y. Ct. of App.), 21 Am. B. R. 593; 194 N. Y. 420; aff'g, s. c., 21 Am. B. R. 278; 127 App. Div. (N. Y.) 163.

Remedy of judgment creditor if aggrieved by order cancelling judgment is to appeal or ask leave to reargue, but not to move to vacate.

McKee v. Preble, 31 Am. B. R. 852; 154 App. Div. (N. Y.) 156.

Applies to debt due State.

In re Brandreth, 14 Hun (N. Y.) 585.

Section applies to a judgment recovered after the filing of the petition upon a previous indebtedness.

Crouse v. Whittelsey, 15 N. Y. Supp. 851.

As to partnership debt.

Berry Bros. v. Sheehan, 17 Am. B. R. 322; 115 App. Div. (N. Y.) 488.

In re Quackenbush (N. Y. Sup.), 19 Am. B. R. 647; 122 App. Div. (N. Y.) 456.

Where a partner was not served in an action against his firm, and no individual judgment was entered against him, he is not entitled to a cancellation of the judgment on his discharge in bankruptcy, where there was no adjudication in that proceeding as to the partnership debt.

In re Application, etc., of Gruber v. Knobloch, 21 Am. B. R. 467; 129 App. Div. 297.

Dodge v. Kaufman, 15 Am. B. R. 542; 46 Misc. (N. Y.) 248.

Judgment for conversion.

Fechter v. Postel, 17 Am. B. R. 316; 114 App. Div. (N. Y.) 776.

After death of judgment debtor the burden is upon judgment creditor to show that judgment had not been released by the discharge.

In re Peterson, 22 Am. B. R. 549; aff'd (N. Y. App. Div.), 24 Am. B. R. 270.

**When application denied.**

Debt created by fraud.

Kaufman v. Lindner (City Ct.), 6 Civ. Proc. R. 148.

Bullis v. O'Beirne (U. S. Sup.), 13 Am. B. R. 108; 195 U. S. 606; 49 L. Ed. 340.

"Wilful and malicious injury."

In re Halper, 31 Am. B. R. 283; 82 Misc. (N. Y.) 205.

Judgment for criminal conversation, necessarily involving malice.

Tinker v. Colwell (U. S. Sup.), 11 Am. B. R. 568; 193 U. S. 473; 48 L. Ed. 754; aff'g 7 Am. B. R. 334; 169 N. Y. 531.

Judgment for alimony not dischargeable and hence cannot be cancelled.

Maier v. Maier (App. Term. N. Y.), 28 Am. B. R. 856; 77 Misc. (N. Y.) 145.

Denied where it appears judgment creditor had no notice, and address was incorrectly stated in schedules.

Murphy v. Blumenreich, 19 Am. B. R. 910; 123 App. Div. (N. Y.) 645. In re Application, etc., of Quackenbush, 122 App. Div. (N. Y.) 456; 19 Am. B. R. 647. Columbia



Bank v. Birkett, 12 Am. B. R. 691; 195 U. S. 345; aff'g, s. c. 9 Am. B. R. 481; 174 N. Y. 112. Weidenfeld v. Tillinghast (N. Y. City Ct.), 18 Am. B. R. 531; 54 Misc. (N. Y.) 90. Cagliostro v. Indelle, 17 Am. B. R. 685; 58 Misc. (N. Y.) 44. Schiller v. Weinstein, 15 Am. B. R. 183; 47 Misc. (N. Y.) 622. Sutherland v. Lasher, 11 Am. B. R. 780; 41 Misc. (N. Y.) 249; aff'd, 87 App. Div. (N. Y.) 633.

Burden of proof.

Weidenfeld v. Tillinghast (*supra*).

Effect of failure to have provable judgment cancelled of record.

In re Peterson, 22 Am. Dec. 549; aff'd, 24 Am. B. R. 270.

Proper listing of creditors.

Kreitlein v. Ferger (U. S. Sup.), 34 Am. B. R. 862; 238 U. S. 21; 59 L. Ed. 1184; rev'g 28 Am. B. R. 908.

Mailing of notice in manner prescribed in Act.

In re Downing, 28 Am. B. R. 778.

Debt not properly scheduled when scheduled as "unknown," when in fact known.

Miller v. Guasti (U. S. Sup.), 29 Am. B. R. 201; 226 U. S. 170; 57 L. Ed. 173; aff'g Guasti v. Miller, 26 Am. B. R. 797.

An order on an application to cancel a judgment is an order in a special proceeding and is appealable to Court of Appeals.

Guasti v. Miller, (N. Y. Ct. of App.), 26 Am. B. R. 797; 203 N. Y. 259.

# PART X.

## COMPOSITION WITH CREDITORS, BEFORE AND AFTER ADJUDICATION.

- FORM No. 290. Offer of Composition.
- 291. Petition for Meeting to consider Composition.
  - 292. Petition for Appointment of Referee and staying Adjudication.
  - 293. Order appointing Referee and staying Adjudication.
  - 294. Notice of Meeting to consider Composition before Adjudication.
  - 295. Acceptance of Offer.
  - 296. Petition to deposit Money for the Purpose of Composition.
  - 297. Order to deposit thereon.
  - 298. Certificate of Deposit.
  - 299. Application for Confirmation of Composition.
  - 300. Order to show Cause on Petition for Confirmation.
  - 301. Notice to Creditors of Confirmation.
  - 302. Referee's Certificate thereon.
  - 303. Order confirming Composition and making Distribution.
  - 304. Notice of Appearance of objecting Creditor.
  - 305. Specifications of Objection to Confirmation of Composition.
  - 306. Exceptions to Specifications.
  - 307. Report of Special Master on Specifications.
  - 308. Order refusing Confirmation of Composition upon Report of Master.
  - 309. Petition to set aside a Composition.
  - 310. Order setting aside a Composition.

### FORM No. 290.

#### OFFER OF COMPOSITION.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p>IN THE MATTER</p> <p>OF</p> <p>.....</p> <p>(Alleged) Bankrupt.</p>	}	No. ....
--	---	----------

To ..... Esq., Referee in Bankruptcy, and the creditors of....  
....., a bankrupt (or, an alleged bankrupt).

The undersigned, (who was adjudicated a bankrupt herein on the ..... day of ....., 19..., and) whose schedule of property and list of creditors have been previously duly filed in the office of the clerk of this court, (or with ....., Esq., the referee in bankruptcy in charge,) and who was examined in open court or at a meeting of his creditors herein on the ..... day of ....., 19..., does hereby offer a composition at ..... per cent. (.....%) of the claims of his creditors, allowed or to be allowed, except those entitled to priority, in this proceeding and payable as follows:

[Here state particulars of offer.]

Dated ....., 19...

.....,  
(Alleged) Bankrupt.

[Verification.]

NOTES.

**Act, Sec. 12-a. General Orders XII, (3), XXXII.**

**Offer.**— Bankrupt may offer, but not until schedules have been filed; and may offer at first meeting of creditors.

In re Hilborn, 4 Am. B. R. 741; 104 Fed. 866.

In re Fox (D. C. N. Y.), 34 Am. B. R. 812; 222 Fed. 135.

In "open court," meaning of.

In re Bloodworth-Sternbridge Co., 24 Am. B. R. 156; 178 Fed. 372.

Bankrupt may offer after his discharge when effect is the same as an offer to purchase the assets of the estate.

In re Spiller, 36 Am. B. R. 399.

Amended offer. Notice to creditors.

In re Kinnane Co., 33 Am. B. R. 243; 217 Fed. 488.

Acquiring money for payment of composition by use of bankrupt's credit.

Zavelo v. Reeves (U. S. Sup.), 29 Am. B. R. 493; 227 U. S. 625; 57 L. Ed. 676; aff'g 171 Ala. 401.

**FORM No. 291.**

[Official.]

**PETITION FOR MEETING TO CONSIDER COMPOSITION.**

District Court of the United States for the ..... District of .....  
In Bankruptcy.

IN THE MATTER

OF

.....  
*Bankrupt.*

To the Honorable ....., Judge of the District Court of the  
United States for the ..... District of .....

The above-named bankrupt respectfully represents that a composition of  
..... per cent. upon all unsecured debts, not entitled to a priority  
..... in satisfaction of ..... debts has been proposed by .....  
to ..... creditors, as provided by the acts of Congress relating to  
bankruptcy, and ..... verily believes that the said composition will  
be accepted by a majority in number and in value of ..... creditors  
whose claims are allowed.

Wherefore, ..he pray .... that a meeting of ..... creditors may be  
duly called to act upon said proposal for a composition, according to the  
provisions of said acts and the rules of court.

.....,  
*Bankrupt.***NOTES.**

This form is seldom used, as offer and acceptances are filed and application made at  
once to confirm.

**FORM No. 292.**

**PETITION FOR APPOINTMENT OF REFEREE AND STAYING  
ADJUDICATION.**

United States District Court,  
..... District of .....

IN THE MATTER

OF

.....  
*Alleged Bankrupt.*

To the District Court of the United States for the ..... District  
of .....

The petition of ..... respectfully alleges and shows:

1. That he is the alleged bankrupt herein.
2. That on the ..... day of ....., 19..., a petition in involuntary bankruptcy was filed in this Court by ..... and ..... and ....., creditors of your petitioner praying that he be adjudicated a bankrupt and on same day a subpoena was issued.
3. That petitioner's time to answer such petition has not yet expired.
4. That petitioner is about to offer terms of composition to his creditors and such proposed composition has been accepted by a substantial number of his creditors in number and amount and such offer is in good faith.
5. That petitioner has filed a schedule of his property and list of his creditors as required by the Act.

Wherefore he prays for an order referring this proceeding to a referee for the purpose of calling a meeting of his creditors to consider the offer of composition, and that all proceedings upon the adjudication be stayed until the offer of composition has been either confirmed or rejected.

.....  
*Petitioner.*

[Verification.]



FORM No. 293.

ORDER APPOINTING REFEREE AND STAYING ADJUDICATION.

At a Stated Term of the United States  
District Court for the ..... District of  
..... held at the Court House in the  
City of ..... on the ..... day of  
....., 19..

PRESENT:  
Hon.....,  
*District Judge.*

IN THE MATTER  
OF  
.....  
*Alleged Bankrupt.*

Upon reading and filing the annexed petition of ....., verified  
the ..... day of ....., 19.., upon all the papers and proceedings  
had herein, and on motion of ....., attorney for the alleged bank-  
rupt, it is

Ordered, that ....., Esq., be and he hereby is appointed referee  
for the purpose of calling a meeting of creditors to consider a proposed offer of  
composition to be made by the alleged bankrupt herein, and to do each and  
every other thing necessary in and about carrying out the said offer of compo-  
sition; and it is

Further ordered that all proceedings upon an adjudication herein be stayed  
until the said offer of composition be either confirmed or rejected by this  
Court.

.....,  
*D. J.*

**FORM No. 294.**

**NOTICE OF MEETING TO CONSIDER COMPOSITION BEFORE  
ADJUDICATION.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Alleged Bankrupt.</i></p>	}	No. ....
---	---	----------

To the creditors of ..... of the City of ..... and district  
aforesaid, alleged bankrupt:

Notice is hereby given that by an order of Hon. ...., the judge  
of this court, dated the ..... day of ....., 19.., the above-  
entitled proceeding has been referred to me as referee in bankruptcy under  
section 12-a of the Bankruptcy Act, to call a meeting of creditors for the  
allowance of claims, the examination of the alleged bankrupt, and the preser-  
vation and conduct of the estate of the same; and that action upon the peti-  
tion for adjudication has been stayed until ten days after it shall be determined  
whether a composition herein shall be confirmed.

Notice is further given that, pursuant to said order and in conformity with  
said section 12-a, a meeting of creditors will be held at the office of .....  
....., Referee in Bankruptcy, Room ....., No. .... Street,  
City of ....., on the ..... day of ....., 19.., at .....  
o'clock in the forenoon, at which time the said creditors may attend, prove  
their claims, examine the alleged bankrupt and transact such other business  
as may properly come before said meeting.

Dated ....., 19...

.....,  
*Referee in Bankruptcy.*

**FORM No. 295.**

**ACCEPTANCE OF OFFER.**

United States District Court,  
for the ..... District .....:  
In Bankruptcy.

IN THE MATTER  OF  .....  <i>Bankrupt.</i>
--

To ....., Esq., Referee in Bankruptcy and the Bankrupt above named:

The undersigned creditors, whose signatures, residences, claims and the amount at which the same have been allowed are hereafter set out, do hereby accept the offer of composition at ..... per cent. (..%) made herein by ....., the above named bankrupt, on the ..... day of ....., 19.., and payable as follows:  
(Here follow terms of offer exactly.)

Dated ....., 19...

	Signature of	Amount of
Witness.	Creditor.	Claim.
[Verification, if desired.]		

**NOTES.**

A creditor, who has once accepted, cannot in the absence of fraud or misrepresentation, withdraw his acceptance.

In re Levy, 6 Am. B. R. 299; 110 Fed. 744.

After acceptance bankrupt may not withdraw.

In re Ennis and Stoppani (So. Dist. N. Y.). (Not reported.)

Mortgagees whose debts are contingent upon a deficiency arising under a foreclosure, are neither necessary nor proper parties.

In re Kahn, 9 Am. B. R. 107; 121 Fed. 412.

Assignee of a number of creditors to be counted as one creditor only.

In re Messengill, 7 Am. B. R. 669; 113 Fed. 366.

Acceptance in writing.

In re Goldstein, 32 Am. B. R. 402; 213 Fed. 115.

## FORM No. 296.

**PETITION TO DEPOSIT MONEY FOR THE PURPOSE OF COMPOSITION.**

United States District Court,  
 ..... District of .....

IN THE MATTER

OF

.....  
*Bankrupt.*

To the District Court of the United States,

for the ..... District of .....

The petition of ..... respectfully alleges:

1. That on the ..... day of ....., 19.., a petition in involuntary bankruptcy was filed in this Court against the above named bankrupt by certain of his creditors, and by an order duly entered herein adjudication upon said petition has been stayed.

2. That the said bankrupt has offered terms of composition to his creditors which have been accepted by a majority in number and amount of his said creditors. That the said bankrupt has been examined in open Court and has filed his schedules as required by the Bankruptcy Act and complied with all requirements.

3. That petitioner has been requested by the bankrupt to furnish ..... dollars to carry out the terms of the composition and petitioner is ready and willing to do so. That this sum is to be used with other moneys on hand in the estate to carry out the composition upon the express condition that said moneys so deposited by petitioner for the purpose of carrying out the terms of the composition, in the event that the said composition be not confirmed, be returned to petitioner.

Wherefore, he prays for an order granting him permission to deposit in a designated depository of this Court, the sum of ..... dollars to be used for the purpose of the proposed composition of the bankrupt herein with his creditors and in the event that said composition be not confirmed, then that said moneys so deposited be returned to petitioner.

.....  
*Petitioner.*

[ Verification. ]

**FORM No. 297.****ORDER TO DEPOSIT THEREON.**

At a Stated Term of the United States  
District Court for ..... District of  
....., held at the Court House  
in the City of ..... on the .....  
day of ....., 19...

**PRESENT:**

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

.....  
*Bankrupt.*

Upon reading and filing the annexed petition of ....., duly verified,  
and upon all proceedings had herein and on motion of .....  
attorney for the bankrupt herein, it is

Ordered that permission be and the same is hereby given to .....  
to deposit in the ..... Bank (or Trust Company at .....)  
a depository duly designated by this Court, to the order of the judge of the  
United States District Court for the ..... District of ....., the  
sum of \$. .... which is to be used towards carrying out the terms of  
the composition offered by the said bankrupt to his creditors, and it is

Further ordered that in the event that the said composition be not con-  
firmed that the said moneys so deposited by ..... be returned to  
him.

.....,  
*D. J.*



## FORM No. 298.

## CERTIFICATE OF DEPOSIT.

United States District Court,  
for the ..... District .....:  
In Bankruptcy.

IN THE MATTER  
OF

No. ....

.....  
*Bankrupt.*

To the Honorable Judge of the United States District Court,  
for the ..... District .....:

The ....., of ....., a designated depository of  
bankruptcy funds in this district, hereby certifies that it has on deposit, to  
your order in this proceeding, the sum of \$....., the amount of money  
necessary as determined by this court to pay the costs of the proceeding and  
all claims entitled to priority of payment therein:

(And also certifies that it holds on deposit the consideration offered, and  
accepted by the creditors of ....., bankrupt, upon this composition.)

Dated ....., 19...

.....,  
*Depository.*

by .....

## NOTES.

**Deposit of consideration.**

Amount must be enough to pay all creditors the stipulated percentage.

In re Fox, 6 Am. B. R. 525.

In re Harvey, 16 Am. B. R. 345; 144 Fed. 901.

To order of judge of the court.

In re Bloodworth-Sternbridge Co., 24 Am. B. R. 156; 178 Fed. 372.

Use of funds collected under a bond given by private banker.

In re Deutsch Bros. (D. C. N. Y.), 33 Am. B. R. 858; 220 Fed. 532.

Secured claims not liquidated should not be considered in determining the amount.

In re Harvey (*supra*).

Right of unscheduled creditor.

In re Ennis & Stoppani, 25 Am. B. R. 383; 183 Fed. 859.

Surrender of voidable preference.

Condition precedent to allowance of claim.

In re B. Feinberg & Sons (D. C. Mass.), 26 Am. B. R. 587; 187 Fed. 283; but see,

In re Glinasin, 34 Am. B. R. 818.

Taxes must be provided for.

In re Flynn, 13 Am. B. R. 720; 134 Fed. 145.

In re Fisher & Co., 14 Am. B. R. 366; 135 Fed. 223.

Deposit must cover all creditors scheduled.

In re Atlantic Construction Co. (D. C. N. Y.), 35 Am. B. R. 838; 228 Fed. 571.

Sufficient cash to pay all debts which have priority and the costs of the proceedings, must be deposited.

In re Fisher & Co. (*supra*); In re Fox (*supra*); In re Harvey (*supra*).

Costs of proceeding. In re Harris, 9 Am. B. R. 20; 117 Fed. 575.

Referee's fees.

In re J. Bacon & Sons, 34 Am. B. R. 825; 224 Fed. 764; modified, Kinkead v. J. Bacon & Sons (C. C. A. 6th Cir.), 36 Am. B. R. 390.

Waiver of deposit by creditors.

s. c. (*supra*).

Counsel fees. In re Dalton, 14 Am. B. R. 617; 137 Fed. 178.

Waiver of fees by attorneys.

In re Frischknecht (C. C. A. 2nd Cir.), 34 Am. B. R. 530; 223 Fed. 417; 139 C. C.

A. 11.

Bankrupt must pay his own attorney, as no costs allowed to him on contest.

In re Martin, 18 Am. B. R. 250; 152 Fed. 582.

Right to accumulated interest.

In re Kelley, 35 Am. B. R. 127; 223 Fed. 383.

Order of referee *res adjudicata* as to action to recover same in State court.

Coen v. James (App. Div. N. Y.), 33 Am. B. R. 249; 164 App. Div. 419.

**FORM No. 299.**

[Official.]

**APPLICATION FOR CONFIRMATION OF COMPOSITION.**

United States District Court,  
for the ..... District of .....  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER OF</p> <p>.....</p> <p style="text-align: center;">(<i>Alleged</i>) <i>Bankrupt.</i></p>	}	No.....
---	---	---------

To the Honorable Judge of the District Court of the United States, for the  
..... District of .....

At ....., in said district, on the ..... day of .....,  
19.., now comes ....., the above named (alleged) bankrupt, and respect-  
fully represents to the court that after he had been examined in open Court  
[or at a meeting of his creditors] and had filed in court a schedule of his  
property and a list of his creditors, as required by law, he offered terms of  
composition to his creditors, which terms have been accepted in writing by a  
majority in number of all creditors whose claims have been allowed, which  
number represents a majority in amount of such claims; that the consideration  
to be paid by the (alleged) bankrupt to his creditors, the money necessary to pay  
all debts which have priority, and the costs of the proceedings amounting in  
all to the sum of ..... dollars, has been deposited subject to the order of  
the Judge, in the ..... No. ...., ....., designated  
depository of money in bankruptcy cases.

Wherefore, the said ..... respectfully asks that the said com-  
position may be confirmed by the court.

.....  
(*Alleged*) *Bankrupt.*

(Verification.)

**FORM No. 300.**

**ORDER TO SHOW CAUSE ON PETITION FOR CONFIRMATION.**

..... District of .....,ss.:

On this ..... day of ..... A. D. 19.., on reading the foregoing petition for confirmation of composition, it is

Ordered by the court, that a hearing be had upon the same, before the Honorable Judge of the U. S. District Court, in the U. S. Court House, in the City of ....., on ....., ....., 19.., at ..... M., and that notice thereof be published in the ....., a newspaper printed in said district, and that all known creditors and other persons in interest may appear at the said time and place and show cause, if any they have, why the prayer of the said petition should not be granted, and also attend the examination of the bankrupt thereon.

And it is further ordered by the court that the referee in charge shall send by mail to all known creditors, copies of said petition and of this order addressed to them as required by law.

Witness, the Honorable Judge of the said court, and the seal thereof, at the city of ....., in said district, on the ..... day of ....., 19..

.....,

*Clerk.*

[Proof of mailing as in application for discharge.]

FORM No. 301.

NOTICE TO CREDITORS OF CONFIRMATION.

United States District Court,  
for the ..... District .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;">(Alleged) Bankrupt.</p>	}	No.....
--	---	---------

To the creditors of ....., (alleged) bankrupt:

Notice is hereby given that the above named (alleged) bankrupt has filed his petition, verified the ..... day of ....., 19..., setting forth among other things that he has offered terms of composition, which terms have been accepted in writing by a majority in number of all creditors whose claims have been allowed, and which number represents a majority in amount of such claims, that the consideration to be paid by the (alleged) bankrupt to his creditors and the money necessary to pay all debts which have priority and the costs of the proceedings have been duly deposited in a duly designated depository, and asking that said composition may be confirmed by the court.

Notice is hereby given that all creditors and other persons are ordered to attend at the hearing before the Honorable Judge of the United States District Court in the United States Court House, on ....., ....., 19... at ..... M., and then and there show cause, if any they have, why the prayer of said petitioner should not be granted, and also to attend the examination of the (alleged) bankrupt thereon.

Dated ....., 19...

.....,  
Referee in Bankruptcy.  
No.....Street,  
City of.....

[Annex proof of publication as in Discharge proceeding.]



## FORM No. 302.

## REFEREE'S CERTIFICATE THEREON.

In the District Court of the United States,  
 for the ..... District of .....  
 In Bankruptcy.

<p style="text-align: center;">IN THE MATTER OF .....  <i>Bankrupt.</i></p>	}	<p>No.....</p> <p>Referee's Certificate On Composition.</p>
---	---	---

I, ....., Referee in Bankruptcy, to whom the above entitled proceeding was duly referred by order of this court, do hereby

Certify that the foregoing is a record of the proceedings had before me in the above entitled proceeding, and I further certify that the schedules disclosed ..... assets, not exempt by law and that ..... trustee has been appointed herein, and

I, further certify and report that the said bankrupt duly offered terms of composition to ..... creditors after he had been examined at a meeting of ..... creditors and had filed in court a schedule of property and a list of creditors as required to be filed by the Bankruptcy Act; that said offer of composition was duly accepted in writing by a majority in number of all creditors whose claims have been allowed, which number represents a majority in amount of such claims, and that such written acceptance of such proposed composition is returned herewith; that the consideration to be paid by the bankrupt to all his creditors, the money necessary to pay all debts which have priority and the costs of the proceedings, amounting in all to the sum of \$..... have been deposited, subject to the order of the Judge, in ....., one of the designated depositories of money in bankruptcy cases in ....., and that a certificate of such deposit is returned herewith; that, in my opinion, the confirmation of said composition is for the best interest of the creditors, and I further certify that as far as appears by the record herein the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to a discharge, and the said offer and its acceptance are in good faith and have not been made or procured except as provided in the Bankruptcy Act, or by any means, promises or acts forbidden by the Bankruptcy Act.

(And I further certify that the following is an itemized statement of the sums deposited with me as indemnity herein and of the items of charges against the same and of the balance remaining in my hands.)

Dated . . . . ., 19....

.....,

*Referee in Bankruptcy.*

[Here attach indemnity account in So. Dist. of New York.]

NOTES.

In the Southern District of New York papers constituting "Record on Composition" should be arranged in following order:

1. Record of Proceedings before Referee.
2. Order of Reference.
3. Affidavits of Publishing and Mailing.
4. Order appointing Trustee (if any).
5. Order approving bond.
6. Minutes.
7. Offer of Composition.
8. Waivers of Attorneys (if any).
9. Waivers of Creditors (if any).
10. Acceptances of Creditors.
11. Certificate of Deposit.
12. Petition for Confirmation and Order to show Cause thereon.
13. Affidavit Publishing and Mailing.
14. Certificate of Referee.
15. Indemnity Account.
16. Affidavit on Confirmation. (Rule 23.)

**FORM No. 303.**

**ORDER CONFIRMING COMPOSITION AND MAKING DISTRIBUTION.**

United States District Court,

for the ..... District of .....:

In Bankruptcy.

IN THE MATTER  OF  .....  <i>Bankrupt.</i>
--

No. ....

An application for the confirmation of the composition at . . % offered by the bankrupt to his creditors, having been filed in court, and it appearing that

such composition has been accepted by a majority in number of all of the creditors whose claims have been allowed, and that such creditors represent a majority in amount of such claims, and the consideration required by Section 12-b of the Bankruptcy Act of 1898 having been deposited in the place designated by this court, and subject to the order of ..... the Judge (or Judges) of said court; and it also appearing that said composition is for the best interests of the creditors, and that the bankrupt has not been guilty of any of the acts, or failed to perform any of the duties which would be a bar to his discharge, and that the offer and its acceptance are in good faith and has not been made or procured by any means, averments or acts contrary to the Acts of Congress relating to bankruptcy; and it further appearing that an order to show cause why such composition should not be confirmed has heretofore been made herein, and due notice having been given, as required by Section 58-a, (2), of said Bankruptcy Act, and no specifications of objection to such confirmation having been filed, and the court being satisfied in all of the particulars specified in Section 12-b of said Act; it is

Ordered, that said composition be, and the same hereby is, in all respects confirmed; and it is further

Ordered and Decreed, that the distribution of the moneys deposited with the ..... in these proceedings to the order of ..... Judge, (or Judges) shall be made by the (trustee) herein, by checks drawn and signed by him, and countersigned by ....., Esq., the referee in charge of this case, as follows:

- 1. That he first pay the costs of these proceedings and the claims entitled to priority as set forth in schedule "A" hereto annexed and made part of this order.
- 2. That he pay to the persons named in schedules "B" and "C" hereto annexed and made part of this order the amounts set opposite their respective names, the same being a composition dividend of ...% upon the claims of the general creditors of said bankrupt which have been scheduled, proven, or allowed by the referee herein.
- 3. That he pay the balance of the deposit remaining in the ..... Bank after making the aforesaid payments to the bankrupt or his attorney.

Witness the Hon. ...., Judge of said Court  
at the Court House in the City of .....,  
this ..... day of ....., 19..

.....,  
D. J.

[Schedules as above annexed and signed by referee.]

**CERTIFICATE OF REFEREE THEREON.**

In the District Court of the United States,  
for the ..... District of .....

IN THE MATTER

OF

No.....

.....  
*Bankrupt.*

I, ....., Referee in Bankruptcy in charge of the above entitled proceedings, do hereby certify that the list of creditors and the amount due them respectively are correctly set forth in the annexed schedules.

And I further certify that the calculation of payments to be made under the composition confirmed herein and as set forth in the said annexed schedules is correct.

Dated ....., 19...

.....  
*Referee in Bankruptcy.*

**NOTES.****Act, Sec. 12-d, e.**

Only the judge has power to confirm.

In re Sonnabend, 18 Am. B. R. 117.

Section strictly construed. In re Frear, 10 Am. B. R. 199; 120 Fed. 978. In re Rider, 3 Am. B. R. 178; 96 Fed. 808.

Broadway Trust Co. v. Mannheim, 14 Am. B. R. 122; 47 Misc. (N. Y.) 415; 95 N. Y. Supp. 93.

Reorganization agreement not to be confirmed as a composition under the Act.

In re Northampton Portland Cement Co. (D. C. Pa.), 25 Am. B. R. 565; 185 Fed. 542.

When confirmation should not be withheld.

In re French, 25 Am. B. R. 77; 181 Fed. 583.

Upon entry of order of confirmation, the title to bankrupt's property immediately reverts in him. In re Winship Co. (C. C. A. 7th Cir.), 9 Am. B. R. 638; 120 Fed. 93; 56 C. C. A. 45.

Rights of bankrupt under lease made by his trustee.

The Bracklee Co. v. O'Connor (N. Y. Sup. Ct.), 24 Am. B. R. 499; 67 Misc. (N. Y.) 599; 122 N. Y. Supp. 710.

Order of confirmation in effect a discharge and may be pleaded in bar with like effect.

Mandell & Co. v. Levy (N. Y. Sup. Ct.), 14 Am. B. R. 549; 47 Misc. (N. Y.) 147; 93 N. Y. Supp. 545.

United States ex rel. Adler v. Hammond (C. C. A. 6th Cir.), 4 Am. B. R. 736; 104 Fed. 862; 44 C. C. A. 229.

Glover Grocery Co. v. Dorne, 8 Am. B. R. 702; 116 Ga. 216.

Ross v. Saunders (C. C. A. 1st Cir.), 5 Am. B. R. 350; 105 Fed. 915; 45 C. C. A. 123.

Stone v. Jenkins, 4 Am. B. R. 568; 176 Mass. 544.

Mortgage creditor cannot recover a deficiency judgment on foreclosure against bankrupt.

American Woolen Co. v. Cohen, 142 App. Div. (N. Y.) 880.

Confirmation of a composition of a bankrupt co-partnership releases the partners from individual liability for firm debts.

Abbott v. Anderson et al., 31 Am. B. R. 877.

If not pleaded is deemed waived.

Dimock v. Revere Coffee Co., 117 U. S. 559; 29 L. Ed. 994.

Laches on part of creditor to correct amount of scheduled claim.

In re Wilkins, 27 Am. B. R. 235; 191 Fed. 94.

Effect of failure to carry out a composition.

In re A. B. Carton & Co., 17 Am. B. R. 343; 148 Fed. 63.

In re Maytag-Mason Motor Co., 35 Am. B. R. 160; 223 Fed. 684.

Except in case of fraud, a creditor knowing that he is not included in schedules cannot afterwards complain of the omission.

In re Abrams and Rubins, 23 Am. B. R. 25; 173 Fed. 430.

Application of funds on failure of composition.

In re Wiener, 32 Am. B. R. 777; 215 Fed. 278.

Liability for expenses. s. c. 33 Am. B. R. 355; 217 Fed. 173.

Effect of.

On an action for deceit.

Friend v. Talcott (U. S. Sup.), 30 Am. B. R. 31; 228 U. S. 27; 57 L. Ed. 718; aff'g 24 Am. B. R. 708.

Acceptance of dividend under composition held in New York to release security in absence of agreement to the contrary.

McDonald v. Taylor & Co. (N. Y. App. Div.) 26 Am. B. R. 635; 144 App. Div. (N. Y.) 329.

The endorser of an accommodation note is not discharged from liability because payee had participated in and assented to a composition made by principal debtor.

Easton Furniture Mfg Co. v. Caminez (N. Y. App. Div.), 27 Am. B. R. 29; 146 App. Div. (N. Y.) 436.

See *contra*. In re Benedict (D. C. N. Y.), 18 Am. B. R. 604; 140 Fed. 55.

Effect of secured creditor.

Moschkovitz v. Wagner (City Ct. N. Y.), New York Law Journal, Jan. 19, 1916, p. 1440.

**Distribution on composition.**

Judge to prescribe manner.

In re Lane, 11 Am. B. R. 137; 125 Fed. 772.

As to referee's powers thereon.

In re Fox, 6 Am. B. R. 525.

Right of unscheduled creditor to share.

In re Ennis & Stoppani (D. C. N. Y.), 25 Am. B. R. 383; 183 Fed. 859.

Claims not proved within one year.

In re Brown, 10 Am. B. R. 588; 123 Fed. 336.

In re Lane (*supra*).

In re French (D. C. Mass.), 25 Am. B. R. 77; 181 Fed. 583.

In re Blond (D. C. Mass.), 34 Am. B. R. 193; 188 Fed. 452.



Bankrupt may oppose allowance of claims.

In re Lane (*supra*).

In re French (*supra*).

But not heard to oppose claim of creditor who has received a preference.

In re Ghinasin, 34 Am. B. R. 818.

Order confirming a composition is a judgment granting a discharge reviewable by appeal under Sec. 25-a.

In re Friend (C. C. A. 7th Cir.), 13 Am. B. R. 595; 134 Fed. 778; 67 C. C. A. 500.

An order refusing to confirm a composition on the sole ground that "it is not for the best interests of creditors," is not a bar to a subsequent discharge, and therefore is not a final order denying a discharge from which an appeal will lie under Sec. 25-a (2) of the Act authorizing an appeal from a judgment denying a discharge.

In re McVoy Hardware Co. (C. C. A. 7th Cir.), 29 Am. B. R. 322; 200 Fed. 949; 119 C. C. A. 337.

Ross v. Saunders (C. C. A. 1st Cir.), 5 Am. B. R. 350; 105 Fed. 915; 45 C. C. A. 123.

But see, United States ex rel. Adler v. Hammond (C. C. A. 6th Cir.), 4 Am. B. R. 736; 104 Fed. 862; 44 C. C. A. 229.

Parties to appeal.

Marshall Field & Co. v. Wolf & Bro. Dry Goods Co. (C. C. A. 8th Cir.), 9 Am. B. R. 693; 120 Fed. 815; 57 C. C. A. 326.

Ross v. Saunders (*supra*).

Time to appeal. In re McCall, 16 Am. B. R. 670; 145 Fed. 898; 76 C. C. A. 430.

(As to appeals in composition cases, see "Appeals," *infra*.)

## FORM No. 304.

### NOTICE OF APPEARANCE OF OBJECTING CREDITOR.

United States District Court,

for the ..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

Bankrupt.

To the District Court of the United States,

for the ..... District of .....

The clerk of this court will please enter my appearance as attorney for ..... of ..... a creditor of .....

the above named bankrupt, whose claim has been duly filed and allowed herein, and who desires to file specifications of objection to the confirmation of the proposed composition herein.

Dated ....., 19...

.....,

*Attorney for.....,*

*Objecting Creditor.*

Address.....

**FORM No. 305.**

**SPECIFICATIONS OF OBJECTION TO CONFIRMATION OF COMPOSITION.**

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER

OF

No.....

.....  
(*Alleged*) *Bankrupt.*

....., of ....., a creditor and person interested in the estate of ....., the above-named (alleged) bankrupt, does hereby oppose and object to the confirmation of the composition offered by said (alleged) bankrupt, and, for grounds of such opposition and objection, does file the following specifications:

I. That said composition is not for the best interests of the creditors herein, on the ground that the assets belonging to this estate properly handled and administered will pay a considerably larger dividend to creditors and for that reason the proposed composition should not be confirmed.

II. That the (alleged) bankrupt has been guilty of acts which would be a bar to his discharge, in that he has, etc.

[Here set forth specifically such acts.]

III. That the offer and its acceptance are not in good faith, because of the fact that:

[Here set forth acts or conduct complained of.]

Wherefore, ..... objects to the confirmation of the composition herein and asks a hearing of the Court thereon.

.....,  
*Objecting Creditor.*

By.....,

*Attorney.*

Address.....

[Verification.]

#### NOTES.

##### **Specifications of objection.**

Only grounds available are those set forth in Sec. 12 (d).

In re Rudwick, 2 Am. B. R. 114; 93 Fed. 787.

Must be definite and certain and in the language of the Act.

Should be framed with great precision, with averment of facts, not conclusions.

In re Rider, 3 Am. B. R. 178; 96 Fed. 808.

Who may file. Creditor or "party in interest."

An assignee of an original claim against a bankrupt entitled to file.

In re Comstock, 19 Am. B. R. 65; 154 Fed. 747.

The number of creditors objecting is immaterial.

In re Godwin, 10 Am. B. R. 252; 122 Fed. 111.

In re Olman, 13 Am. B. R. 395; 134 Fed. 681.

In re Frazin and Oppenheim (So. Dist. N. Y.), (not reported).

Withdrawal of objections.

In re Levy (D. C. Mass.), 22 Am. B. R. 769; 172 Fed. 780.

Burden of proof on objector.

City Nat. Bank v. Doolittle (C. C. A. 5th Cir.), 5 Am. B. R. 736; 107 Fed. 236; 46 C. C. A. 258.

Burden on those attacking the composition as against the best interests of creditors to show the offer is inadequate and that a substantially larger sum might reasonably be expected to result from administration in regular course of bankruptcy.

In re Hoxie (D. C. Me.), 25 Am. B. R. 32; 180 Fed. 508.

##### **Grounds of objection.**

##### **Because against the best interests of the creditors.**

Adler v. Jones (C. C. A. 6th Cir.), 6 Am. B. R. 245; 109 Fed. 967; 48 C. C. A. 761; aff'g 103 Fed. 444.

As a general rule the fact that a majority in number and amount of creditors have accepted is *prima facie* evidence that it is for the best interests of all.

In re Waynesboro Drug Co., 19 Am. B. R. 487; 157 Fed. 101.

In re Arrington Co., 8 Am. B. R. 64; 113 Fed. 498.

In re Criterion Watch etc. Co., 8 Am. B. R. 206.

In re Woodend, 12 Am. B. R. 768; 133 Fed. 593.

In re Hoxie (*supra*).

In re Barde & Levitt, 31 Am. B. R. 161; 207 Fed. 654.

In re Spiller, 36 Am. B. R. 399.

There must be a majority in number and amount of individual as well as partnership creditors for individual composition of bankrupt partner.

In re L. Ullman & Co. (D. C. N. Y.), 24 Am. B. R. 755; 180 Fed. 944.

Because of the commission of acts or failure to perform duties which would bar a discharge.

In re Wilson, 5 Am. B. R. 849; 107 Fed. 83.

In re Comstock, 19 Am. B. R. 65; 154 Fed. 747.

In re Olman, 13 Am. B. R. 395; 134 Fed. 681.

In re Godwin, 10 Am. B. R. 252; 122 Fed. 111.

In re Barde (*supra*).

Materially false statement to obtain credit.

In re Griffin, 25 Am. B. R. 206; 180 Fed. 792.

In re O'Callaghan, 29 Am. B. R. 304; 199 Fed. 662.

In re McLellan, 30 Am. B. R. 325; 204 Fed. 482.

Failure to keep books.

In re Sabsevit, 28 Am. B. R. 623; 197 Fed. 109.

Concealment of assets upon advice of counsel.

In re B. Jacobson & Son Co. (C. C. A. 3rd Cir.), 28 Am. B. R. 492; 196 Fed. 949;  
116 C. C. A. 499.

**Because of the absence of good faith.**

In re Seligman, 20 Am. B. R. 774; 163 Fed. 549.

In re Comstock (*supra*).

Secret preferences render illegal.

In re Chaplin, 8 Am. B. R. 121; 115 Fed. 162.

McCormick v. Solinsky (C. C. A. 5th Cir.), 18 Am. B. R. 540; 152 Fed. 984; 82 C.  
C. A. 134.

Continuing liability of indorser of note not an inducement vitiating a composition.

In re B. Jacobson & Son Co. (C. C. A. 3rd Cir.), 28 Am. B. R. 492; 196 Fed. 949;  
116 C. C. A. 499.

Inequality among creditors.

In re Kinnane Co. (D. C. O.), 34 Am. B. R. 119; 221 Fed. 762.

An agreement by a trustee in bankruptcy whereby, without the knowledge of other creditors, he personally guarantees to one creditor the payment of a certain dividend in order to induce such creditor to sign a composition agreement, constitutes a secret preference to such creditor, and although it does not render the composition void, is unenforceable as against public policy.

Jacobs v. Siff (N. Y. Sup. App. Term), 27 Am. B. R. 189; 74 Misc. (N. Y.) 58;  
131 N. Y. Supp. 656.

Compare Hanover Nat. Bank v. Van Nostrand, 142 N. Y. 405.

Almon v. Hammond, 100 N. Y. 527.

FORM No. 306.

EXCEPTIONS TO SPECIFICATIONS.

United States District Court,  
for the ..... District of .....  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER OF</p> <p>..... <i>Bankrupt.</i></p>	}	No.....
---	---	---------

....., the bankrupt herein by ....., his attorney, hereby excepts to the specifications of objection filed herein by ....  
....., to the confirmation of his proposed composition with creditors herein as follows:

1. He excepts to the first of said specifications of objection as indefinite, insufficient in law and as constituting no ground under the Bankruptcy Act and the Amendments thereof, for withholding confirmation of the proposed composition.

2. He excepts to the second of said specifications on the ground that there are no specific averments of fact from which an issue may be raised and tried.

Wherefore this exceptant asks that said specifications be dismissed.

.....  
*Attorney for Bankrupt.*  
.....  
*City of .....*



**FORM No. 307.**

**REPORT OF SPECIAL MASTER ON SPECIFICATIONS OF OBJECTION  
TO COMPOSITION.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	<p style="font-size: 3em;">}</p> <p>No. ....</p>
---	--

To the Honorable Judge of the District Court of the  
United States, for the ..... District of .....:

I, ....., to whom as Special Master, the issues raised by the specifications filed by ....., creditors, objecting to the composition offered by the bankrupt herein, and accepted by a majority in number and amount of his creditors, were referred by this court, for examination, testimony and report, do respectfully report as follows:

The matter came on to be heard before me upon notice of hearing served upon the attorney for the objecting creditors with admission of due and timely service.

Appearances:

....., Attorney for objecting creditors.  
....., Attorney for bankrupt.

The objections contained in the specifications filed in opposition to the composition are ..... in number:

1. That the offer is inadequate in amount and not for the best interests of creditors.
2. That there is no cash payment.
3. That the bankrupt's property is about to be put into the hands of trustees or directors, who are not required to give any bond.
4. Because the said bankrupt has committed an offense against the Bankruptcy Act in that he did, etc. [Specify nature of offense.]

[Here follows substance of report, each specification considered and separately passed upon.]

I have, therefore, come to the conclusion and report that in my opinion the

objecting creditors have failed to sustain any of their objections and they should each of them be overruled, and I recommend that the composition be confirmed [or rejected upon opposite findings.]

Dated, ....., 19...

Respectfully submitted,

.....

*Special Master.*

**FORM No. 308.**

**ORDER REFUSING CONFIRMATION OF COMPOSITION UPON REPORT OF MASTER.**

At a Stated Term of the United States District Court for the ..... District of ....., held at the United States Court House, City of ....., on the .... day of ....., 19...

Present:

Hon. ....,

*District Judge.*

IN THE MATTER

OF

No. ....

*Bankrupt.*

An application for confirmation of the composition offered by the bankrupt to his creditors having been made herein, and specifications of objection having been filed thereto by ....., and ....., creditors and parties in interest, and such specifications having been referred to ....., Esq., as special master to ascertain and report the facts with his opinion, and such special master having filed his report dated ....., 19.., and recommended that certain of such specifications be sustained and that the bankrupt's offer of composition should be rejected and the proposed composition disallowed, and upon the filing of the report of the special master the said application for confirmation of the said composition having been argued, and after hearing .....,

attorney for ....., in support of said motion, and .....  
 ....., attorney for ....., in opposition thereto,

Now, on motion of ....., attorney for ....., it is

Ordered, that the report of ....., special master herein, dated ....., 19.., and filed in the office of the clerk of this court on that day, be, and the same is hereby in all respects confirmed; and it is

Further ordered, that the offer of composition made by ..... bankrupt, be and the same is hereby rejected, and the application for the confirmation of said composition be and the same is hereby denied and disallowed; and it is

Further ordered, that the objecting creditors herein recover their costs and disbursements out of the estate of the bankrupt herein, to be paid by the trustee, and that it be and the same is hereby referred to ..... Esq., referee in charge, to ascertain and determine the amount to be allowed to the said objecting creditors to reimburse them for their costs and disbursements and to fix the amount of the allowance to be granted to the said attorneys for the said objecting creditors.

.....,

*D. J.*

### FORM No. 309.

#### PETITION TO SET ASIDE A COMPOSITION.

In the District Court of the United States

for the ..... District of .....

In Bankruptcy.

IN THE MATTER

OF

.....  
*Bankrupt.*

To the District Court of the United States,

for the ..... District of .....:

The petition of ..... respectfully shows to this court and alleges:

1. That he is a creditor and party in interest herein, whose claim has been duly filed and allowed in this proceeding.

2. That on the ..... day of ..... 19... the bankrupt herein, after he had been examined before the referee, duly offered a composition in said proceeding to his creditors upon the following terms and conditions:

.....  
That said offer was thereafter duly accepted by petitioner and other creditors of said bankrupt, upon the terms and conditions as offered and on the ..... day of ....., 19..., the said composition was duly confirmed by the District Judge in the manner and form as offered and accepted.

3. That said composition was offered and accepted and confirmed upon statements that all the creditors should share equally in said composition and receive the same pro rata amounts upon their said several claims.

4. That since the entry of the order confirming said composition and within a period of six months thereafter your petitioner has discovered that statements upon which the said composition was procured were false and untrue and that fraud was practised by the said bankrupt in procuring the said composition in the following particulars: [here allege specifically the fraudulent acts of bankrupt by which it is claimed the composition is vitiated.]

5. That all of the above facts and circumstances were not known to petitioner prior to the confirmation of the composition herein.

6. That your petitioner relied upon the representations of the bankrupt and would not have accepted said composition had he known the exact situation and the fraudulent acts of the bankrupt, as above stated.

7. No previous application for the order asked for herein has been made.

Wherefore, your petitioner prays that the said composition be vacated and set aside, the proceeding reinstated and the property returned to the trustee for distribution, according to the Bankruptcy Act.

.....,  
*Petitioner.*

[Verification.]

# NOTES.

## **Setting aside a composition.**

**Secs. 13 (2), (9).**

**Cross references. Secs. 12, 15, 21 (f), 29 (b), 64 (c).**

Collier on Bankruptcy (10th Ed.), pp. 304-307.

In re Ballance, 33 Am. B. R. 642; 219 Fed. 537; rev'g 30 Am. B. R. 689; 206 Fed. 505.

## **For fraud in procuring such composition.**

Section 13 a limitation on Section 2 (9).

In re Rudwick, 2 Am. B. R. 114; 93 Fed. 787.

What sufficient.

In re Kaplan, 29 Am. B. R. 54.

Fraud must have been discovered since the confirmation of the composition. In re Roukous (D. C. R. I.), 12 Am. B. R. 128; 128 Fed. 645.

Court may determine whether the fraud shown is such as would have warranted, had the facts then been known, the rejection of the composition.

In re Sacharoff and Kleiner (D. C. N. Y.), 20 Am. B. R. 814; 163 Fed. 664.

Misrepresentation and concealment.

In re Wrisley Co. (C. C. A. 7th Cir.), 13 Am. B. R. 193; 133 Fed. 388; 66 C. C. A. 450.

The making of false schedules and false oath to same and concealment of property by the bankrupt constitute fraud, "practiced in the procuring of such composition."

In re Roukous (*supra*).

Failure to fulfil on part of bankrupt not sufficient in itself to warrant setting aside.

In re Eisenberg, 16 Am. B. R. 776; 148 Fed. 325.

When motion will not be granted.

In re Cooper Bros. (D. C. N. Y.), 20 Am. B. R. 634; 159 Fed. 956.

In re Abrams and Rubins, 23 Am. B. R. 25; 173 Fed. 430.

Union Furniture Co. v. Walker-Cooley Furniture Co., 31 Am. B. R. 73; 206 Fed. 217.

In re Ennis and Stoppani (D. C. N. Y.), 25 Am. B. R. 383; 183 Fed. 859.

#### Practice.

Application by "party in interest."

Creditor who has assigned his claim though induced to do so by bankrupt's misrepresentations not "party in interest."

In re Wrisley and Co. (*supra*).

Assignee of claim may file.

#### Time limit.

Application should be made to judge and within six months after the composition has been confirmed.

In re Eisenberg, 16 Am. B. R. 776; 148 Fed. 325. In re Jersey Island Packing Co., 18 Am. B. R. 417; 154 Fed. 839.

Heard by judge who granted original order.

In re Ennis and Stoppani (D. C. N. Y.), 25 Am. B. R. 383; 183 Fed. 859.

Petition need not allege that petitioner restored or offered to restore the consideration immediately on discovery of the fraud.

In re Roukous (*supra*).

Verification in usual form for bill in equity sufficient.

In re Roukous (*supra*).

A referee to whom as special master, a petition to set aside a composition has been referred, may grant an order reopening the estate.

In re Sonnabend, 18 Am. B. R. 117.

Neither the petitioner nor the bankrupt is entitled to a jury trial.

In re Kaplan, 29 Am. B. R. 54.



FORM No. 310.

ORDER SETTING ASIDE A COMPOSITION.

At a Stated Term of the District Court of the  
United States, held in and for the .....  
District of ....., at the Court House,  
in the City of ....., on the .....  
day of ....., 19...

Present:

Hon. ....,  
District Judge.

IN THE MATTER  
OF

.....  
*Bankrupt.*

....., a creditor of the above named bankrupt, having  
filed a petition herein, verified the .... day of ....., 19.., praying  
that the composition of said bankrupt with his creditors, confirmed by order of  
this court dated the ..... day of ....., 19.., be vacated and set  
aside for fraud in procuring same, and the proceeding reinstated, and an  
order to show cause having been issued thereon on the .... day of .....,  
19.., and the said motion having come on for hearing before this court on the  
.... day of ....., 19.., (and a trial had),

Now, upon reading and filing the petition of ..... aforesaid,  
and upon all the pleadings and proceedings herein, and after hearing .....  
....., Esq., in support of said motion, and ....., Esq.,  
in opposition thereto, and due deliberation having been had thereon, it is, on  
motion of ....., attorney for said petitioner,

Ordered, adjudged and decreed that the composition of the bankrupt with  
his creditors herein, confirmed by this court by order made and entered on the  
..... day of ....., 19.., be and the same hereby is in all  
respects vacated and set aside and the bankruptcy proceeding reinstated.

And it is further ordered that the property of the said bankrupt be and  
hereby is restored to the trustee herein and the said trustee directed to proceed  
with the administration of this estate, as provided in the Bankruptcy Act.

.....,  
D. J.

## PART XI.

### RECLAMATION PROCEEDINGS.

- FORM No. 311. Demand in Reclamation.
- 312. Petition to reclaim Property, on Account of false Representations.
  - 313. Notice of Motion to reclaim.
  - 314. Petition to reclaim consigned Goods.
  - 315. Answer in Reclamation.
  - 316. Bond in Reclamation for Possession of Property.
  - 317. Order dismissing Reclamation.
  - 318. Order of Reference to Special Master.
  - 319. Report of Special Master in Reclamation.
  - 320. Judgment in Reclamation for Delivery etc., upon Report of Master.
  - 321. Bill of Costs in Reclamation and Notice of Taxation.

#### FORM No. 311.

##### DEMAND IN RECLAMATION.

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

<p>IN THE MATTER</p> <p>OF</p> <p>.....</p> <p style="text-align: right;"><i>Bankrupt.</i></p>
--

Please take notice that the undersigned is the owner of and entitled to the immediate possession of the following chattels which were wrongfully and unlawfully obtained from him by the above named bankrupt. (or which were heretofore delivered to said bankrupt upon a conditional sale agreement, (or

consignment agreement) dated ..... 19..), and that the undersigned demands the immediate return of said property, to wit:

[Here set forth property claimed in detail].

Dated ..... 19...

Yours, etc.,

By.....,

*Attorney.*

To ..... Esq.,

Receiver in Bankruptcy of

[or Trustee of].....Bankrupt.

Sir:—

**FORM No. 312.**

**PETITION TO RECLAIM BECAUSE OF FALSE REPRESENTATIONS.**

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER

OF

No.....

*Bankrupt.*

To the District Court of the United States,  
for the ..... District of .....:

The petition of ..... respectfully shows and alleges:

First: (That your petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of ....., and having an office for the transaction of its business in the city of .....).

Second: That at all the times hereinafter mentioned, the ..... said bankrupt was engaged in business in the City of ..... as .....;

Third: That your petitioner is the owner and entitled to the immediate possession of the property set forth in schedule "A" hereto annexed, and

made a part hereof, and that the value of said property is ..... (\$.....) dollars.

Fourth: That your petitioner further alleges upon information and belief, that heretofore and on or about the ..... day of ....., 19..., an involuntary petition in bankruptcy was filed in the office of the clerk of this Court, by three creditors of above bankrupt, praying that the said ..... be adjudged an involuntary bankrupt, and that thereafter ....., Esq., was duly appointed as receiver in bankruptcy of the said ....., and that pursuant to the order of his appointment, he did take possession of and continues to hold the property mentioned and described in the schedule herto annexed and made a part hereof, marked "A," and that the said property is in the original piece in which it was delivered by your petitioner to the said ..... (That on the ..... day of ....., 19..., the said ....., was duly adjudicated a bankrupt).

Fifth: That heretofore and before the commencement of this proceeding, due demand was made by your petitioner upon the said ....., Esq., Receiver, that he deliver possession of the said goods, wares and merchandise in said schedule "A" mentioned to your petitioner, but that said demand has been refused.

Sixth: That heretofore and at various times between the ..... day of ..... and the ..... day of ..... both dates inclusive, said ....., upon false and fraudulent representations, induced your petitioner to sell and deliver to him the said goods, wares and merchandise mentioned and described in said schedule "A" hereto annexed, and the said ..... wrongfully, fraudulently and with intent to defraud your petitioner and knowing that your petitioner relied upon the truth of the representations so made, procured the said property to be delivered to his custody.

Seventh: That at the time that the said goods were so delivered to the said ..... by your petitioner as aforesaid, and at the time that the said false and fraudulent representations were made as aforesaid, the said ..... was insolvent and unable to pay his debts in full to his knowledge, and made false and fraudulent representations with intent to cheat and defraud your petitioner, and so knowing his insolvency as aforesaid, induced your petitioner to sell and deliver the said merchandise as aforesaid with the intent and design not to pay therefor when the term of credit upon which the same had been sold should have expired.

Eighth: Your petitioner further alleges that the false and fraudulent representations, the truth of which he relied upon, and which induced him to sell and deliver the said merchandise as aforesaid, are as follows, to wit:

That heretofore and on or about the ..... day of ....., 19..., the said ....., did make, sign and deliver a written statement of his financial condition to ..... in the City of ....., wherein he did state that he had merchandise on hand on the ..... day of

..... to the value of \$. ....; outstanding accounts of \$. ....; fixtures of the value of \$. ....; and cash on hand and in bank of \$. ...., or a total of assets of \$. .... and did further state that his liabilities amounted to the sum of \$. .... and that he was worth over and above all his debts and liabilities the sum of \$. ....

Ninth: That your petitioner obtained the said statement previous to the sale and delivery of the said merchandise in said schedule "A" mentioned: and as your petitioner is informed and does verily believe, the said ..... did deliver the said signed statement as aforesaid to petitioner for the purpose of obtaining credit, and that your petitioner relied upon the truth of the representations therein contained.

Tenth: Upon information and belief, that the aforesaid representations were false and untrue, in that the said ..... did not have on the ..... day of ....., the assets as heretofore alleged and stated by him in said statement, of the total value of \$. ...., and owed in liabilities a sum in excess of the liabilities as hereinabove alleged and by him in said statement specified of \$. ...., and that the said ..... did not have a surplus over and above all of his debts and liabilities of the sum of \$. ....

Eleventh: That the said goods had not been taken by virtue of a warrant against your petitioner for the collection of any tax, assessment or fine, issued in pursuance of a statute of the United States, and that they have not been seized by virtue of an execution or warrant of attachment from or through whom your petitioner has derived title to the said chattels.

Wherefore, your petitioner does respectfully pray that the said ..... Esq., as said temporary receiver herein, be directed to deliver to your petitioner the said property in said schedule "A" mentioned and described, upon your petitioner filing in the office of the clerk of this Court a bond in double the value of said property to be returned to him conditioned that in the event your petitioner fails to establish his right, title and interest in and to the said property, that then, and in that event, your petitioner will repay to the said receiver, or trustee hereinafter to be elected, the value of the said property so to be delivered to him and all costs and expenses, and your petitioner have such other and further relief, as to this Honorable Court may seem just and proper.

Dated ....., 19...

.....  
*Petitioner.*

.....,  
*Solicitors for Petitioner,*  
[Address.]  
[Verification.]  
[Schedule "A" annexed.]



## NOTES.

Sections 70-a (5), 67-a, d.

**When right to reclaim exists.**

In re Murphy-Barbee Shoe Co., 11 Am. B. R. 428.

In re Hamilton Furniture etc. Co., 9 Am. B. R. 65; 117 Fed. 774.

In re Patterson and Co., 10 Am. B. R. 748; 125 Fed. 562.

In re Weil, 7 Am. B. R. 90; 111 Fed. 897.

In re Epstein, 6 Am. B. R. 60; 109 Fed. 874.

In re Hildebrant, 10 Am. B. R. 184; 120 Fed. 992.

In re O'Connor, 9 Am. B. R. 18; 114 Fed. 777.

John Silvey Co. v. Tift, 17 Am. B. R. 9; 123 Ga. 804; 51 S. E. 748.

Halsey v. Diamond Distilleries Co. (C. C. A. 3rd C'r.), 27 Am. B. R. 333; 191 Fed. 498; 112 C. C. A. 142.

Purchase with intent not to pay.

In re Henry Siegel Co. (D. C. Mass.), 35 Am. B. R. 130; 223 Fed. 368.

Surrender of payments.

In re Murphy-Barbee Shoe Co. (*supra*).

[Ed. note.]

In Southern District of New York by order of judges reclamations of property of less than \$500 in value must be brought in municipal court.

When "consigned goods" may not be reclaimed.

In re Penny and Anderson (D. C. N. Y.), 23 Am. B. R. 115; 176 Fed. 141.

Customers of bankrupt stockbroker.

In re Pierson, Jr., and Co. (D. C. N. Y.), 35 Am. B. R. 213; 225 Fed. 889.

**Burden of proof upon claimant.**

In re Murphy-Barbee Shoe Co. (*supra*).

In re Heckathorn (D. C. Pa.), 16 Am. B. R. 467; 144 Fed. 499.

In re Sol Aarons and Co. (C. C. A. 2nd Cir.), 28 Am. B. R. 399; 193 Fed. 646; 113 C. C. A. 514.

Hecker-Jones-Jewell Milling Co. v. Strasbourger (In re Marks) (C. C. A. 2nd Cir.), 33 Am. B. R. 275; 218 Fed. 453; 134 C. C. A. 253.

**When right to reclaim denied.**

In re Hill Co. (C. C. A. 7th Cir.), 12 Am. B. R. 221 (note); 123 Fed. 866; 59 C. C. A. 354.

In re Simpson Mfg. Co. (C. C. A. 7th Cir.), 12 Am. B. R. 212; 130 Fed. 307; 64 C. C. A. 553.

In re Priegle Paint Co., 23 Am. B. R. 385; 175 Fed. 586.

See, In re Froelich Rubber Refining Co., 15 Am. B. R. 72; 139 Fed. 201.

In re O'Connor, 7 Am. B. R. 428; 112 Fed. 666.

In re American Knit Goods Mfg. Co. (D. C. N. Y.), 19 Am. B. R. 212; 155 Fed. 906.

In re Berg (D. C. Mass.), 25 Am. B. R. 170; 183 Fed. 885.

In re Russell and Birkitt, 5 Am. B. R. 608.

**Election of remedies.**

When claimant has filed a claim and voted for the trustee with knowledge of the bankrupt's fraudulent representations, he may not afterwards rescind the contract, withdraw his claim and reclaim the goods.

Standard Varnish Works v. Haydock (C. C. A. 6th Cir.), 16 Am. B. R. 286; 143 Fed. 318; 74 C. C. A. 456.

In re Kenyon, 19 Am. B. R. 194; 156 Fed. 863.

In re Pierce (C. C. A. 8th Cir.), 19 Am. B. R. 664; 157 Fed. 757; 85 C. C. A. 14.

Nauman Co. v. Bradshaw (C. C. A. 8th Cir.), 27 Am. B. R. 565; 193 Fed. 350; 113 C. C. A. 274.

Waiving the fraud by ratification of contract.

Fowler v. Britt Carson Shoe Co. (Ga. Sup. Ct.), 27 Am. B. R. 232.

In re Stewart, 24 Am. B. R. 474; 178 Fed. 463.

**Rescission of contract.**

Right to rescind depends upon the conditions and intention of the buyer, when the contract was made, irrespective of conditions at time of delivery.

In re Levi and Picard, 16 Am. B. R. 756; 148 Fed. 654.

In re Rose, 14 Am. B. R. 345; 135 Fed. 888.

In re Levi and Picard, 17 Am. B. R. 430; 155 Fed. 262.

McEwen v. Totten (C. C. A. 5th Cir.), 21 Am. B. R. 336; 164 Fed. 837; 90 C. C. A. 599.

In re McDonald, 14 Am. B. R. 797; 138 Fed. 463.

Southern Pine Co. v. Savannah Trust Co. (C. C. A. 5th Cir.), 15 Am. B. R. 618; 141 Fed. 802; 73 C. C. A. 60.

In re Davis, 7 Am. B. R. 273; 112 Fed. 294.

Bloomington v. Empire Rubber Mfg. Co., 8 Am. B. R. 74; 114 Fed. 1016.

Wm. Openhym and Sons v. Blake (C. C. A. 8th Cir.), 19 Am. B. R. 639; 157 Fed. 536; 87 C. C. A. 122.

Haywood Co. v. Pittsburgh Industrial Iron Works, 19 Am. B. R. 780; 163 Fed. 799.

In re Darlington (D. C. N. Y.), 20 Am. B. R. 800; 163 Fed. 385.

In re Dunlop (Dunlop v. Mercer) (C. C. A. 8th Cir.), 19 Am. B. R. 361; 156 Fed. 545; 86 C. C. A. 435.

In re Schindler, 19 Am. B. R. 800; 158 Fed. 458.

In re Susquehanna Roofing Co., 23 Am. B. R. 5; 173 Fed. 150.

Crucible Steel Co. of America v. Holt (C. C. A. 6th Cir.), 23 Am. B. R. 302; 174 Fed. 127; 98 C. C. A. 101; aff'd, 224 U. S. 262; 56 L. Ed. 756.

Ellet-Kendall Shoe Co. v. Ward (C. C. A. 8th Cir.), 26 Am. B. R. 114; 187 Fed. 982; 110 C. C. A. 320.

**Fraudulent concealment of financial condition, when hopelessly insolvent.**

In re Spann (D. C. Ga.), 25 Am. B. R. 551; 183 Fed. 819.

Gillespie v. J. C. Piles and Co. (C. C. A. 8th Cir.), 24 Am. B. R. 502; 178 Fed. 886; 102 C. C. A. 482.

Talcott v. Henderson, 31 Ohio St. 162.

See, In re Lewis (D. C. Pa.), 10 Am. B. R. 741; 125 Fed. 143.

In re Sol Aarons and Co. (*supra*).

In re Hecker-Jones-Jewell Milling Co. v. Strasbourger (In re Marks) (*supra*).

Donaldson v. Farwell, 93 U. S. 631.

Not necessary that false representations should be the sole and exclusive consideration for the credit, but only that they were a material consideration.

In re Gany, 4 Am. B. R. 576; 103 Fed. 930.

Right of defrauded vendor for false or fraudulent representation not affected by amendment of 1910. In re J. S. Appel Suit and Cloak Co., 28 Am. B. R. 818; 198 Fed. 322.

**What petition should contain.**

Sufficient allegations to sustain a complaint in trover, or such as are required by the strictest practice in an affidavit in replevin.

In re Levi and Picard (D. C. N. Y.), 17 Am. B. R. 430; 155 Fed. 262.

In re Marengo Co. Mercantile Co., 29 Am. B. R. 46; 149 Fed. 474.

*Contra.*

In re Pierce (*supra*).

Where there has been no false representations inducing the sale it is necessary to allege and prove the intent of the bankrupt not to pay at the time of making the contract; not so, however, where false representations have been made which are relied upon.

In re New York Commercial Co. (C. C. A. 2nd Cir.), 35 Am. B. R. 779; overruling doctrine of, In re Levi and Picard (D. C. N. Y.), 16 Am. B. R. 756; 148 Fed. 654 and s. c. (*supra*).

See, Ellet-Kendall Shoe Co. v. Ward (C. C. A. 8th Cir.) (*supra*).

In re Hamilton Furniture and Carpet Co. (D. C. Ind.) (*supra*).

Trustee proper party to defend against reclamation.

In re Schlessel, 18 Am. B. R. 434.

Bankrupt's testimony at first meeting of creditors is admissible against his trustee upon a hearing in reclamation proceedings had after death of bankrupt.

In re Thompson (D. C. N. J.), 28 Am. B. R. 794; 197 Fed. 681.

Money paid under a mistake of fact is impressed with a constructive trust which follows it in the hands of the trustee in bankruptcy. In re Jacob Berry and Co. (C. C. A. 2nd Cir.), 16 Am. B. R. 564; 147 Fed. 208; 77 C. C. A. 434.

See, on following funds in hands of factors.

Bills v. Schliep (C. C. A. 2nd Cir.), 11 Am. B. R. 607; 127 Fed. 103; 62 C. C. A. 103.

FORM No. 313.

NOTICE OF MOTION TO RECLAIM.

In the District Court of the United States,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER  
  
OF  
  
.....  
  
*Bankrupt.*

No. ....

Please take notice that upon the annexed petition of .....  
verified the ..... day of ....., 19..., and upon the petition in bank-  
ruptcy and all the proceedings herein, I shall move this Court, at a Stated  
Term thereof to be held at the United States Court House in the City of.....  
on the ..... day of ....., 19..., at ..... o'clock in the .... noon  
of said day, or as soon thereafter as counsel can be heard, for an order direct-  
ing and requiring ..... Esq., the receiver (or trustee) herein,  
to turn over and deliver to ..... the property mentioned and  
described in Schedule "A" hereto annexed, or so much thereof as has come

into his possession, [upon such petitioner executing and filing herein a bond in the sum and form required by this Court,] and for such other and further relief as may be just and proper in the premises.

Dated ....., 19...

Yours, etc.,

.....  
*Attorney for Petitioner.*

[Address.]

To .....,

*Temporary Receiver (or Trustee) of* .....,

*Bankrupt.*

..... Esq.,

*Attorney for Receiver (or Trustee).*

**FORM No. 314.**

**PETITION TO RECLAIM CONSIGNED GOODS.**

United States District Court,

..... District of .....

In Bankruptcy.

IN THE MATTER

OF

.....  
*Bankrupt.*

To the District Court of the United States,

for the ..... District of .....

The petition of ..... respectfully shows to this Court:

1. That he is engaged in business as ..... at .....

2. That heretofore on or about the ..... day of ....., 19...,

a petition in involuntary bankruptcy was filed in this Court by three creditors, praying that ..... above named, be adjudged a bankrupt and on said day ..... Esq., was duly appointed receiver of all the assets and effects of said alleged bankrupt duly qualified and is now acting as such receiver.

3. (An order of adjudication in bankruptcy herein was entered on the .... day of ....., 19...)



4. That heretofore and between the ..... day of ..... and the ..... day of ....., 19..., both dates inclusive, petitioner, at the special instance and request of the said ....., the bankrupt herein, delivered upon consignment to the said ....., the goods, wares and merchandise specified in the schedule hereto annexed, marked Exhibit "A", and made a part hereof.

5. That prior to the delivery of the said goods, and on or about the ..... day of ....., 19..., the said petitioner and ..... entered into an agreement in writing, a copy of which is hereto annexed and marked Exhibit "B" and made part hereof as though herein specifically set forth.

That the goods referred to in the annexed schedule were delivered subject and pursuant to the conditions set forth in the said agreement, and are and remain the absolute property of petitioner, who is entitled to the immediate possession of same.

6. That pursuant thereto your petitioner has heretofore demanded the return of the said goods, or the moneys which are set forth therein as its equivalent, but the said ..... has neglected and refused to return the same.

7. Upon information and belief that the said property is now in the possession of the said ....., as receiver, and your petitioner has duly demanded of him the return of the said merchandise, but the said receiver has refused to deliver the same.

Wherefore, petitioner prays for an order directing the said receiver to forthwith deliver to petitioner the said goods in his possession covered by the said consignment agreement, or any moneys which he, the said receiver, may have received upon the sale thereof previous to the entry of such order.

[Add prayer for restraining order, if desired.]

Dated ....., 19...

.....,  
*Petitioner.*

[Verification.]

NOTES.

**Conditional sales.**

Reservation of title.

York Mfg. Co. v. Brewster (C. C. A. 5th Cir.), 23 Am. B. R. 474; 174 Fed. 566; 98 C. C. A. 348.

John Deere Plow Co. v. Anderson (C. C. A. 5th Cir.), 23 Am. B. R. 480; 174 Fed. 815.

Chilberg v. Smith (In re American Machine Works) (C. C. A. 9th Cir.), 23 Am. B. R. 483; 174 Fed. 805; 98 C. C. A. 523.

Ludvigh v. American Woolen Co. and ano., 23 Am. B. R. 314; 176 Fed. 145.

In Indiana, not valid when purpose is a resale of the article.

In re Gilligan (Troy Wagon Works v. Hancock) (C. C. A. 7th Cir.), 23 Am. B. R. 668; 152 Fed. 605; 81 C. C. A. 595.

Walter A. Wood Mowing and R. Machine Co. v. Vanstory (C. C. A. 4th Cir.), 22 Am. B. R. 740; 171 Fed. 375; 96 C. C. A. 331.

Corbitt Buggy Co. v. Ricaud (C. C. A. 4th Cir.), 22 Am. B. R. 316; 169 Fed. 935; 95 C. C. A. 279.



The validity of contract depends upon the law of the State where chattels are placed.

Davis v. Crompton (C. C. A. 3rd Cir.), 20 Am. B. R. 53; 158 Fed. 735; 85 C. C. A. 633.

First Nat. Bank of Pittsburgh v. Guarantee Title and Trust Co., 178 Fed. 187.

In re E. M. Newton and Co. (C. C. A. 8th Cir.), 18 Am. B. R. 567; 153 Fed. 841; 83 C. C. A. 23.

Unitype Co v. Long (C. C. A. 6th Cir.), 16 Am. B. R. 282; 143 Fed. 315; 74 C. C. A. 453; aff'g 14 Am. B. R. 668; 136 Fed. 989.

In re Angeny (D. C. Pa.), 18 Am. B. R. 491; 151 Fed. 959; dist'g In re Tice, 15 Am. B. R. 97; 139 Fed. 52.

In re Cohen (D. C. N. Y.), 20 Am. B. R. 796; 163 Fed. 444.

Mishawaka Woolen Mfg. Co. v. Smith (D. C. Wis.), 20 Am. B. R. 317; 158 Fed. 885; rev'd, 172 Fed. 98; 96 C. C. A. 412.

Pontiac Buggy Co. v. Skinner (D. C. N. Y.), 20 Am. B. R. 206; 158 Fed. 858.

Pridmore v. Puffer Mfg. Co. (C. C. A. 4th Cir.), 20 Am. B. R. 851; 163 Fed. 496; 90 C. C. A. 42.

In re Columbus Buggy Co. (C. C. A. 8th Cir.), 16 Am. B. R. 759; 143 Fed. 859; 74 C. C. A. 611.

In re Nelson, 27 Am. B. R. 272; 191 Fed. 233.

Mishawaka Woolen Mfg. Co. v. Westveer (C. C. A. 6th Cir.), 27 Am. B. R. 345; 191 Fed. 465; 112 C. C. A. 109.

Conditional sale, Pennsylvania Rule, "constructively fraudulent."

In re Butterwick, 12 Am. B. R. 536; 131 Fed. 371.

In re Rinker, 23 Am. B. R. 62; 174 Fed. 490.

In re Burt, 19 Am. B. R. 123; 155 Fed. 267; In re Morris, 19 Am. B. R. 422; 156 Fed. 597.

See, Davis v. Crompton (C. C. A. 3rd Cir.) (*supra*).

#### **Sale or bailment.**

York Mfg. Co. v. Cassell (U. S. Sup.), 15 Am. B. R. 633; 201 U. S. 344; 50 L. Ed. 782; rev'g 14 Am. B. R. 52; 135 Fed. 52; 67 C. C. A. 526.

In re Wells, 15 Am. B. R. 419; 140 Fed. 752.

In re Tice, 15 Am. B. R. 97; 139 Fed. 52.

In re Heckathorn, 16 Am. B. R. 467; 144 Fed. 499.

In re Wood, 15 Am. B. R. 411; 140 Fed. 964.

In re Galt (C. C. A. 7th Cir.), 13 Am. B. R. 575; 120 Fed. 64; 56 C. C. A. 470.

In re Poore, 15 Am. B. R. 174; 139 Fed. 862.

In re Pierce (C. C. A. 8th Cir.), 19 Am. B. R. 664; 157 Fed. 757; 85 C. C. A. 14.

In re Fabian, 18 Am. B. R. 488; 151 Fed. 949.

In re Smith and Nixon Piano Co. (C. C. A. 8th Cir.), 17 Am. B. R. 636; 149 Fed. 111; 79 C. C. A. 53; rev'g 13 Am. B. R. 276; 132 Fed. 983.

L. C. Smith and Bro. Typewriter Co. v. Alleman (C. C. A. 3rd Cir.), 28 Am. B. R. 699; 199 Fed. 1; 117 C. C. A. 577; rev'g In re Franklin Lumber Co. (D. C. Pa.), 26 Am. B. R. 37; 187 Fed. 281.

Thomas v. Field Brundage Co. (C. C. A. 8th Cir.), 32 Am. B. R. 569; 215 Fed. 891; 132 C. C. A. 231.

**Failure to file, since Amendment of 1910 to Section 47-a (2) vesting in trustee the rights of a lien creditor.**

In re Franklin Lumber Co. (D. C. Pa.), 26 Am. B. R. 37; 187 Fed. 281; rev'd, L. C. Smith and Bro. Typewriter Co. v. Alleman, 28 Am. B. R. 699; 199 Fed. 1; 117 C. C. A. 577.

In re J. S. Appel Suit and Cloak Co., 28 Am. B. R. 818; 198 Fed. 322.

In re Bazemore (D. C. Ala.), 26 Am. B. R. 494; 189 Fed. 236.

In re Johnson (D. C. Conn.), 33 Am. B. R. 104; 215 Fed. 666.

In re Faulkner (D. C. Conn.), 25 Am. B. R. 416; 181 Fed. 981.

In re Johnson (D. C. Okla.), 31 Am. B. R. 579; 212 Fed. 311.

Baker Ice Machine Co. v. Bailey (C. C. A. 8th Cir.) (Kansas Stat.), 31 Am. B. R. 593; 209 Fed. 603; 126 C. C. A. 425.

Townsend v. Ashepoo Fertilizer Co. (C. C. A. 4th Cir.), 31 Am. B. R. 682; 212 Fed. 97; 128 C. C. A. 613.

Augusta Grocery Co. v. Southern Moline Plow Co. (C. C. A. 4th Cir.) (So. Car. Stat.), 31 Am. B. R. 677; 213 Fed. 786; 130 C. C. A. 444.

In re Waite Robbins Motor Co. (D. C. Mass.), 27 Am. B. R. 541; 192 Fed. 47.

In re Rose (D. C. Ga.), 30 Am. B. R. 791; 206 Fed. 991.

**Amendment of 1910 to Section 47-a (2); no retroactive effect.**

Holt v. Henly (U. S. Sup.), 32 Am. B. R. 16; 232 U. S. 637; 58 L. Ed. 767; rev'g, s. c. 27 Am. B. R. 578; 193 Fed. 1020; 113 C. C. A. 87; and In re Williamsburg Knitting Mill, 27 Am. B. R. 178.

Arctic Ice Machine Co. v. Armstrong County Trust Co. (C. C. A. 3rd Cir.), 27 Am. B. R. 562; 192 Fed. 114; 112 C. C. A. 458.

Amendment gives a rule of interpretation rather than a substantial right.

In re Farmers' Co-operative Co. of Barlow (N. D.), 30 Am. B. R. 190; 202 Fed. 1005.

In New York held valid as against trustee by virtue of Section 62, Article 4, of Personal Property Law.

In re I. S. Remsen Mfg. Co. (D. C. N. Y.), 35 Am. B. R. 195; 227 Fed. 207; aff'd, (C. C. A. 2nd Cir.), 36 Am. B. R. 799.

In re White's Express Co. (C. C. A. 2nd Cir.), 33 Am. B. R. 74; 215 Fed. 894; 132 C. C. A. 234.

In New Jersey.

In re O'Brien (D. C. N. J.), 32 Am. B. R. 347; 215 Fed. 129.

In Alabama.

In re Dancy Hardware and Furniture Co. (D. C. Ala.), 28 Am. B. R. 444; 198 Fed. 336; aff'd, 201 Fed. 1023.

Local law determines question whether property sold under conditional sale agreement becomes part of the realty.

National Bank of Commerce v. Carbondale Machine Co. (C. C. A. 8th Cir.), 27 Am. B. R. 840; 195 Fed. 187; 115 C. C. A. 139.

As to right of reclaiming creditor to subsequently file claim after expiration of year.

See, In re Landis, 19 Am. B. R. 420; 156 Fed. 318.

Absolute bill of sale in effect a chattel mortgage void for failure to file as required by State law.

In re Gerstman and Bandman (C. C. A. 2nd Cir.), 19 Am. B. R. 145; 157 Fed. 550; 85 C. C. A. 211; aff'g 17 Am. B. R. 882.

In re Schlessel, 18 Am. B. R. 434.

In re King Motor Car Co., 31 Am. B. R. 172.

In re Watts-Woodward Press, Inc. (C. C. A. 2nd Cir.), 24 Am. B. R. 684; 181 Fed. 71; 104 C. C. A. 105.

Reservation of title upon shifting stock of merchandise.

Flanders Motor Co. v. Reed (C. C. A. 1st Cir.), 33 Am. B. R. 842; 220 Fed. 642; aff'g In re Harrington, 32 Am. B. R. 828; 212 Fed. 542; and 29 Am. B. R. 691.

In re Noethen (C. C. A. 2nd Cir.), 29 Am. B. R. 234; 201 Fed. 97; 119 C. C. A. 435; aff'g 27 Am. B. R. 910; 195 Fed. 573.

In re Volence, 27 Am. B. R. 914; 197 Fed. 232.

**FORM No. 315.**

**ANSWER IN RECLAMATION.**

United States District Court,  
for the ..... District .....:  
In Bankruptcy.

IN THE MATTER

OF

No.....

.....  
*Bankrupt.*

..... as Receiver in Bankruptcy (or Trustee) of the estate of the above named bankrupt, answering the petition of the claimant herein, shows and alleges, upon information and belief:

1. Admits the allegations of plaintiff's petition numbered ....., ....., ....., ....., ....., and .....

2. The receiver (trustee) further answering the said petition denies that he has knowledge or information sufficient to form a belief as to the allegations of paragraphs numbered ..... and ..... of said petition, and therefore denies same.

3. The receiver (trustee) further answering the said petition, denies the allegations of paragraph ..... of said petition.

4. The receiver (trustee) denies the allegations of paragraph ....., but admits that a letter dated ....., from the attorneys for the petitioner herein and written after the filing of the petition of bankruptcy herein and containing an alleged demand was received by the bankrupt herein.

5. The receiver (trustee) further answering the said complaint admits that a certain portion of the property claimed by the petitioner has come into the hands of the receiver (trustee) as a part of the assets belonging to this estate.

The receiver (trustee) further answering said petition for a further and separate defense (or counter-claim) thereto alleges:

[Here set forth specifically defense or counter-claim.]

Wherefore, the receiver (trustee) demands judgment dismissing the petition of the claimant herein, with costs.

.....  
*As Receiver (Trustee) in Bankruptcy of*

.....  
(Address.)

.....  
*Attorney for Receiver (Trustee).*

[Verification.]

NOTES.

[Trustee after appointment proper person to answer and defend.]

FORM No. 316.

BOND IN RECLAMATION FOR POSSESSION OF PROPERTY.

United States District Court,  
..... District of .....:  
In Bankruptcy.

IN THE MATTER	} No.....
OF	
..... <i>Bankrupt.</i>	

Know all men by these presents:

That we, ..... of ..... as Principal, and ..... a Corporation organized under the laws of the State of ....., with offices at No. .... Street, in the City of ....., State of ..... (a certificate having been filed for the transaction of its business with the Secretary of State), as Surety, are held and firmly bound unto ....., as Temporary Receiver for ..... bankrupt, and to the Trustee in Bankruptcy of the said bankrupt when elected, or their or either of their successors or assigns, in the sum of ..... dollars [amount double value of property], lawful money of the United States of America, for which payment well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this ..... day of ..... in the year one thousand nine hundred and .....

Whereas, in the above entitled proceeding a petition was duly presented on behalf of the above bound principal praying that ..... as such receiver aforesaid deliver to the said petitioner certain property described in the said petition; and

Whereas, an order was duly entered on the ..... day of ..... directing the said ..... Receiver as aforesaid, to deliver to the said principal, or his order, certain property described in the said petition, or so much thereof as shall have come into the possession of the said ..... receiver, upon condition that the said principal execute, acknowledge and deliver to the said ..... as receiver, a good and sufficient bond conditioned as provided for in said order.

Now, therefore, the condition of this obligation is such, that if in case it shall be finally determined that the said principal is not entitled to the said

goods above referred to, as by the final judgment or order may appear, the said principal shall well and truly pay to the said ..... receiver as aforesaid, his successor or successors, or to the trustee who shall hereafter qualify in the above entitled proceeding, the value of the goods as agreed, namely ..... dollars, which value is hereby agreed upon as the value of the said goods at the time of delivery, together with interest and costs, and if the said petitioner shall diligently prosecute the aforesaid petition, and the performance of any and all judgments or final orders which may be finally recovered against the said property in this court, or any appellate court, in case of appeal or review, and the said principal and surety stipulate to abide by all orders of the court, interlocutory and final, and to pay the amount awarded by the final judgment or decree rendered by the Bankruptcy Court or the Appellate Court, if an appeal or petition to review intervene, with interest.

And that a decree or judgment may be entered summarily against it as provided by Rule ..... and upon said decree or judgment being entered, summary process of execution shall be issued against the principal and the surety by the Court in which such claim is presented to enforce the final order or decree as rendered or upon appeal by the Appellate Court, then this obligation is to be void, otherwise to remain in full force and virtue.

....., *L. S.*

By .....  
*Attorney-in-fact.*

[Acknowledgment by principal and surety.]

NOTES.

- Jurisdiction of court to cancel.
- In re Regealed Ice Co., 29 Am. B. R. 69; 199 Fed. 340.
- In re Todd, 6 Am. B. R. 88; 109 Fed. 265.



**FORM No. 317.**

**ORDER DISMISSING RECLAMATION.**

At a Stated Term of the District Court  
of the United States, in and for the ....  
District of ....., at the Court  
House, in the City of ....., on  
the ..... day of .....,  
19...

Present:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

.....  
*Bankrupt.*

An application having been made by ....., to reclaim certain  
chattels now in the possession of the receiver (trustee) herein, and more par-  
ticularly mentioned and described in the petition of the said reclaiming  
creditor, and the receiver (trustee) having filed his verified answer in oppo-  
sition thereto and having moved to dismiss the said petition on the ground  
of insufficiency, and the same having duly come on for argument, after hearing  
..... in support of said application, and ..... in  
opposition thereto, upon reading and filing the petition of .....,  
verified the ..... day of ....., 19..., and the answer of ....  
....., receiver (trustee) herein, verified the ..... day of .....,  
19...

Now, upon motion of ....., attorney for the receiver, (trustee)  
it is

Ordered, that the said application of ..... to reclaim certain  
property now in the possession of the receiver (trustee) herein, be and hereby  
is dismissed.

.....  
*D. J.*

## FORM No. 318.

## ORDER OF REFERENCE TO SPECIAL MASTER.

At a Stated Term of the United States  
District Court for the .....  
District of ....., held at the  
U. S. Court House in ....., on  
the ..... day of .....,  
19...

Present:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

.....  
*Bankrupt.*

On reading and filing the petition of ..... verified the ..... day  
of ....., 19..., and it appearing therefrom that the petitioner seeks to  
recover possession of certain goods now in the possession of .....  
Esq., the receiver in bankruptcy of the above named bankrupt under a  
claim of title thereto and the said receiver having filed his duly verified  
answer denying the right of petitioner to such possession; now on motion of  
....., attorney for said petitioner, it is

Ordered, that the said petition be and the same hereby is referred to  
..... Esq., as Special Master for examination, testimony and  
report, and it is further ordered that pending the report of said Special Master  
and entry of order thereon, the said receiver in bankruptcy retain possession  
of said goods unless petitioner execute and file herein a bond in double the  
value of said goods in the manner and form approved by this Court.

.....,  
*District Judge.*

## NOTES.

Reference to special master and not to referee as such.

In re Tracy (C. C. A. 2nd Cir.), 24 Am. B. R. 539; 179 Fed. 366; 102 C. C. A. 644.

**FORM No. 319.**

**REPORT OF SPECIAL MASTER IN RECLAMATION.**

District Court of the United States,  
..... District of .....

IN THE MATTER  
OF  
.....  
*Bankrupt.*

To the Honorable Judge of the District Court of the United States for the  
..... District of .....

I, the undersigned referee in bankruptcy, to whom as special master the application of ..... for an order directing the receiver herein to deliver to petitioner or his attorney certain property in said petition mentioned, was duly referred by order dated ..... for examination, testimony and report, do hereby report as follows:

That the above matter was duly brought on for hearing before me and proceedings had thereon of which stenographic minutes are filed herewith, marked Schedule "A."

[That an agreed statement of facts was submitted to me, which is filed herewith marked Schedule "B."]

*Findings of Fact.*

From the documents and proceedings had herein it appears that:  
[Here set for facts forming basis for report.]

.....  
.....

*Conclusions of Law.*

.....  
.....

[Furthermore, the precise questions here under consideration appear to have been considered and decided in the case of ..... by Judge ..... in the District of .....]

For the foregoing reasons I am of opinion that the petition of the claimant should be granted [or denied].

I state my fee as special master at the sum of \$..... and return herewith all papers in this proceeding.

(All of which is respectfully submitted.)

Dated ....., 19...

.....,  
*Special Master.*

**FORM No. 320.**

**JUDGMENT IN RECLAMATION FOR DELIVERY, ETC., UPON REPORT OF MASTER.**

At a Stated Term of the District Court of the United States for the ..... District of ..... held in the United States Court House in the City of ..... on the ..... day of ....., 19...

Present:

Hon. ....,  
*District Judge.*

<p style="text-align: center;">IN THE MATTER OF ..... and ..... <i>Bankrupts.</i></p>	}	No.....
---	---	---------

....., having duly heretofore filed his petition praying leave to reclaim certain property more particularly mentioned and described in said petition upon the grounds that the said bankrupts above named while insolvent, to their knowledge, obtained delivery of the said property with intent upon their part not to pay therefor, and that the purchase and sale of the said property was induced by certain false and fraudulent representations as to their financial condition as is more particularly set forth in said petition; and the receiver of the said bankrupts above named having duly filed his answer and the issues having been duly referred to ..... Esq., as special master; and a trial of the said issues having been had, and the said special master having duly rendered his report dated the ..... day of ....., 19..., in favor of the said reclaiming creditor and against the said receiver; and a motion having been duly made for the entry of an

order, judgment and decree confirming the said report of the said special master, and that final judgment be entered in favor of the said creditor and against the said receiver, and after hearing ..... of counsel for the reclaiming creditor in support of the said application for judgment, and ..... as counsel for the receiver in opposition thereto, and due deliberation having been had,

It is, on motion of ....., attorneys for said creditor

Ordered, adjudged and decreed that the report of ..... Esq., be and the same is hereby confirmed, and it is further

Ordered, adjudged and decreed that ..... do recover of the receiver of the bankrupts above named the property more particularly and in detail set out in the schedule hereto annexed and marked "Schedule A," or in the event of the failure or inability of the said receiver to deliver the said property to the said creditor as aforesaid then that the said creditor ..... do recover of the said receiver of the bankrupts above named damages in the sum of \$. .... with interest thereon from the ..... day of ....., and it is further

Ordered, adjudged and decreed that ..... do recover of the receiver of the bankrupt estate herein the costs and disbursements of this proceeding as taxed by the clerk of this court at the sum of \$. ...., and that the clerk of this court be and he hereby is directed to docket a judgment in favor of the said ..... and as against the receiver of the bankrupts above named, for the recovery of the above property or damages in the event of failure to deliver the same, together with the costs and disbursements so taxed, the same to be paid out of the bankrupt estate.

.....,  
*District Judge.*

#### NOTES.

[Substitute trustee after election and qualification.]

Property or its proceeds if same are traceable.

In re Fabian, 18 Am. B. R. 488; 151 Fed. 949.

Right of inspection to claimant.

In re Sauer, 10 Am. B. R. 353; 122 Fed. 101.

Burden of proof as to identity.

Smith v. Mottley (C. C. A. 6th Cir.), 17 Am. B. R. 863; 150 Fed. 266; 80 C. C. A.

154.

Only recovery of the identified goods may be had; as to goods sold or otherwise disposed of by the bankrupt, the vendor is left to his remedy as a creditor.

In re Eliowich, 17 Am. B. R. 419; 148 Fed. 464.



FORM No. 321.

**BILL OF COSTS IN RECLAMATION AND NOTICE OF TAXATION.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER OF ..... <i>Bankrupt.</i> Re Reclamation Proceedings of .....	}
--	---

..... Bill of Costs.

Costs.

Docket fee ..... \$20

Disbursements.

Fee of Special Master .....

Stenographer's fee for testimony on hearing .....

Total ..... \$

STATE OF .....	}	ss.:
County of .....		
District of .....		

....., being duly sworn, says: that he is the attorney for  
....., claimant (or respondent) herein; that the foregoing  
disbursements are correct in amount, were necessarily incurred, and have  
actually been paid by deponent. That this affidavit is made by deponent  
because the matters therein contained are peculiarly within deponent's  
knowledge.

.....,  
Sworn to before me this .....  
day of ..... 19...

Sir:

You will please take notice, that a bill of costs, of which the within is a  
copy, will be presented to the clerk of the United States District Court for

the ..... District of ....., at his office in the United States Court House, City of ....., on the ..... day of ....., 19..., at ..... o'clock in the ..... noon of that day for taxation and the amount thereof inserted in the order heretofore noticed for settlement.

Dated ....., 19...  
Yours, etc.,

.....,

Attorney for .....

Address

*Claimant [or respondent.]*

.....

.....

To:

....., Esq.,  
*Attorney for claimant [or respondent.]*

NOTE

Costs on dismissal. In re Schocket, 24 Am. B. R. 47; 177 Fed. 583.

DISSOLUTION OF LIENS, PUNISHMENT FOR CONTEMPT, REOPENING ESTATES AND MISCELLANEOUS MATTERS.

- FORM No. 322.

..... Court.  
of .....

STATE OF ..... } ss.:  
County of .....

[519]

1. That he is the temporary receiver in bankruptcy of ..... , defendant above named.

2. That in an action brought in the ..... Court, ..... County, in which ..... is the plaintiff and said ..... is the defendant, on ..... , 19... , a warrant of attachment was issued by the plaintiff to the sheriff of the County of ..... against the property of the said ..... ; that the sum claimed in the said action under which the said warrant of attachment was issued was \$. ..... That on or about the said ..... day of ..... , 19... , and under and pursuant to the said warrant of attachment, the sheriff of the County of ..... attached the following property of the said .....

..... situated at ..... That the said attachment was levied by leaving a notice of the same with the said ..... and by placing a keeper in charge of the property at ..... That the said attachment has not been vacated nor discharged and the said sheriff now claims to be in custody of the said property at No. ....

3. That on the ..... day of ..... , 19... , ..... and ..... duly filed a petition in the United States Court for the ..... District of ..... , praying that the said ..... be adjudged an involuntary bankrupt; that the act of bankruptcy alleged in the petition was .....

That on the ..... day of ..... , 19... , upon the petition of ..... , deponent was duly appointed receiver of all the assets of the above named defendant and required to file a bond in the penalty of ..... dollars (\$. ..... ) for the faithful performance of his duties. That deponent has duly qualified by filing a bond in the penalty required and is now acting as such receiver. That on the ..... day of ..... , 19... , the said ..... was duly adjudicated a bankrupt upon said petition.

4. That said attachment was levied on the ..... day of ..... , 19... , within four months prior to the filing of the petition in bankruptcy against the said ..... , defendant herein, and is null and void by virtue of the provisions of Section 67-c and f of the United States Bankruptcy Act of 1898 and the amendments thereof.

5. That by reason of said attachment, deponent has not been able to take the said property at ..... into his possession as receiver in bankruptcy. That deponent verily believes that the lien of the said attach-

ment should be dissolved and discharged, the property released and that the fees and charges of the sheriff of the County of ..... , should be taxed and allowed by this Court.

6. No previous application has been made for an order herein.

Sworn to before me this .....  
day of ..... 19...

**FORM No. 323.**

**NOTICE OF MOTION TO DISSOLVE LIEN OF ATTACHMENT.**

..... Court,  
of .....

.....	}
..... Plaintiff,	
vs.	
..... Defendant.	

Please take notice that on the petition of ..... and others, filed in the United States District Court for the ..... District of ..... , on the ..... day of ..... , 19... , to have the ..... adjudged a bankrupt, the adjudication in bankruptcy and on the affidavit of ..... , verified ..... , 19... , hereto annexed, and on all the proceedings herein, I shall move this court, at a ..... term thereof, appointed to be held at the ..... Court House, City of ..... , on ..... , the ..... day of ..... , 19... at ..... o'clock in the ..... noon, or as soon thereafter as counsel can be heard for an order that the lien of the warrant of attachment heretofore issued against the property of the ..... to the sheriff of the County of ..... in this action, brought by ..... as plaintiff, against ..... as defendant, be dissolved and discharged and that the Court fix and allow to the sheriff of the County of ..... , such fees and charges as to this Court



may seem proper and that such other and further relief in the premises may be granted as may be proper.

Dated ....., 19...

.....,  
 Attorney for .....,  
*Receiver in Bankruptcy.*  
 of .....

To

Messrs .....,  
 Attorneys for .....,  
*Plaintiff.*  
 .....,  
*Sheriff of the County of* .....

### FORM No. 324.

#### ORDER DISSOLVING LIEN OF ATTACHMENT.

At a Special Term, etc., of the .....  
 Court of ....., held at the  
 Court House, in the City of .....,  
 on the ..... day of .....,  
 19...

Present:

Hon. ....,  
*Justice [or Judge].*

.....	}
.....	
<i>Plaintiff,</i>	
vs.	}
.....	
<i>Defendant.</i>	

The above named defendant having duly moved this Court for an order dissolving and setting aside the lien of the warrant of attachment herein obtained by the plaintiff against the property of the defendant on the..... day of ....., 19..., and said motion having duly come on to be heard,

Now, on reading and filing the notice of motion dated the ..... day of ....., 19..., and the affidavit of ..... verified

the ..... day of ....., 19..., and the certificate of the County Clerk thereto attached, and on reading the summons and complaint herein, and the affidavit of the plaintiff verified the ..... day of ....., 19..., and the undertaking on attachment, dated the ..... day of ....., 19..., and the warrant of attachment herein, said latter ..... papers being on file in the office of the clerk of the ..... of ..... and all of which papers were used in support of said motion;

And it further appearing that the defendant herein is entitled to the relief hereinafter granted because of his adjudication in bankruptcy within four months, as set forth in the aforesaid affidavit of ....., and after hearing ..... Esq., of counsel for the defendant in support of said motion, and ..... Esq., of counsel for the plaintiff in opposition thereto,

Now, on motion of ..... attorney for the defendant, it is

Ordered, that the said motion be and the same is hereby granted and the lien of the writ of attachment obtained by the plaintiff herein in this action on the ..... day of ..... 19..., upon the property of the defendant, is hereby dissolved and set aside.

.....  
J. S. C.

## NOTES.

**Act, Section 67-c and f.** See by analogy Section 47-a.

**An attachment lien is within the provisions of sub-section c as well as f.**

*In re Higgins*, 3 Am. B. R. 364; 97 Fed. 775.

*In re Kemp*, 4 Am. B. R. 242; 101 Fed. 689.

*Wood v. Carr*, 10 Am. B. R. 577; 115 Ky. 303.

Voluntary proceedings included.

*In re Richards*, 3 Am. B. R. 145; 96 Fed. 935; 37 C. C. A. 634.

See, *In re Tune*, 8 Am. B. R. 285; 115 Fed. 906.

Insolvency.

*Wise Coal Co. v. Columbia Zinc and Lead Co. (Mo. App.)* 27 Am. B. R. 445.

*Cook v. Robinson (C. C. A. 9th Cir.)*, 28 Am. B. R. 182; 194 Fed. 785; 114 C. C.

A. 505.

**No laches of trustee makes valid.**

*Hardt v. Schuylkill etc. Co.*, 8 Am. B. R. 479; 69 App. Div. (N. Y.) 90.

It is the adjudication not the filing of the petition which dissolves the lien.

Attachment on mesne process (Conn.)

*Metcalf v. Barker (U. S. Sup.)*, 9 Am. B. R. 36; 187 U. S. 165; 47 L. Ed. 122.

*Schmilovitz v. Bernstein*, 5 Am. B. R. 265; 47 Atl. 884; 22 R. I. 330.

Possession of sheriff.

*In re Walsh Bros.*, 20 Am. B. R. 472; 159 Fed. 560.

By analogy in case of execution.

*In re Kenney*, 5 Am. B. R. 355; 105 Fed. 897; 45 C. C. A. 113.

*Levor v. Seiter*, 8 Am. B. R. 459; 69 App. Div. (N. Y.) 33; modif'g 5 Am. B. R. 576;

34 Misc. (N. Y.) 382.

Sheriff's right to fees for poundage and expenses.

*In re Andre (C. C. A. 2nd Cir.)*, 13 Am. B. R. 132; 135 Fed. 736; 68 C. C. A. 374.

Sheriff having actual possession of property not guilty of contempt for refusal to turn over property on demand of receiver when acting in good faith and on advice of counsel unless fees are paid.

Orr v. Tribble (D. C. Ga.), 19 Am. B. R. 849; 158 Fed. 897.

Conditions precedent to trustee's possession imposed by court when attachment was obtained within four months' period held to be invalid.

In re Shoemaker (C. C. A. 3rd Cir.), 30 Am. B. R. 349; 205 Fed. 113; 123 C. C. A. 345.

Where application to dissolve should be made.

In State court also by better practice, but may be brought in Federal court.

Hardt v. Schuykill etc. Co. (N. Y. App. Div. Dept. 1st), 8 Am. B. R. 479; 69 App. Div. (N. Y.) 90.

Jurisdiction to stay proceedings to enforce attachment.

Tennessee Producer Marble Co. v. Grant et al. (C. C. A. 3rd Cir.), 14 Am. B. R. 288; 135 Fed. 322; 67 C. C. A. 676.

While 67-f discharges the lien it does not vacate the writ of attachment.

King v. Bloch Amusement Co., 20 Am. B. R. 784; 126 App. Div. (N. Y.) 48; 111 N. Y. Supp. 102; aff'd, 193 N. Y. 608.

In re Walsh Bros., 20 Am. B. R. 472; 159 Fed. 560.

When attachment has been discharged by an undertaking given by a surety company, which took security from the defendant sufficient to indemnify it from loss and defendant within four months of the granting of the attachment is adjudicated a bankrupt, the attachment will be vacated on motion of trustee.

C. Tennant Sons and Co. v. New Jersey Oil and M. Co. (N. Y. City Ct.), 31 Am. B. R. 901.

But see, In re Federal Biscuit Co. (C. C. A. 2nd Cir.), 32 Am. B. R. 612; 214 Fed. 221; 130 C. C. A. 635.

Preserving lien of attachment.

Receivers of Virginia Coal and Coke Co. v. Staake (C. C. A. 4th Cir.), 13 Am. B. R. 281; 133 Fed. 717; 66 C. C. A. 547; aff'd, 202 U. S. 141; 50 L. Ed. 967.

The lien by attachment made prior to four months' period and followed by judgment (and levy) within said period, not dissolved by sub-section f.

In re Blair, 6 Am. B. R. 206; 108 Fed. 529.

Pepperdine v. Bank of Seymour, 10 Am. B. R. 570.

In re Snell, 11 Am. B. R. 35; 125 Fed. 154.

See, In re Warner, 16 Am. B. R. 519; 144 Fed. 987.

Batchelder and Co. v. Wedge (Sup. Ct. Vt.), 19 Am. B. R. 268.

In re United States Graphite Co., 20 Am. B. R. 573; 161 Fed. 583.

In re Beaver Coal Co. (C. C. A. 9th Cir.), 7 Am. B. R. 542; 113 Fed. 889; 51 C. C. A. 519; aff'd 6 Am. B. R. 404; 110 Fed. 630.

In re Crafts-Riordon Shoe Co. (D. C. Mass.), 26 Am. B. R. 449; 185 Fed. 931.

A trustee in bankruptcy is entitled to recover the proceeds of a sale of bankrupt's property sold under a judgment in an attachment suit instituted subsequent to the filing of the petition.

Cox v. State Bank of Chicago, 11 Am. B. R. 112; 125 Fed. 654.

Property in hands of an ancillary receiver in bankruptcy is *in custodia legis* and an attachment will not lie against it.

In re Nelson and Bro. Co., 18 Am. B. R. 66; 149 Fed. 590.

Plaintiff in attachment suit not deemed a *bona fide* holder for value.

In re Kaupisch Creamery Co. (D. C. Ore.), 5 Am. B. R. 790; 107 Fed. 93.

**Priority of costs in attachment suit.**

In re The Copper King (Lim.), 16 Am. B. R. 148; 143 Fed. 649.

*Contra.* In re Goldberg Bros., 16 Am. B. R. 521; 144 Fed. 566.

(For other cases see notes to Form No. 167.)

**Mechanics' Liens.**

Hildreth Granite Co. v. City of Watervliet, 31 Am. B. R. 703; 161 App. Div. (N. Y.) 420; rev'g, s. c. 30 Am. B. R. 789; 82 Misc. (N. Y.) 243; 143 N. Y. Supp. 867.

Assignment of moneys due on contract for public improvement under New York Lien Law held valid against trustee even though not filed with proper officer.

In re Interstate Paving Co. (D. C. N. Y.), 28 Am. B. R. 573; 197 Fed. 371.

Unrecorded vendor's lien under statute of Idaho valid against trustee and not affected by amendment to Section 47-a of the Act.

In re Lane Lumber Co. (Lim.) (Boyd v. Wall), 31 Am. B. R. 792; 217 Fed. 550; 133 C. C. A. 402.

**FORM No. 325.**

**ORDER DISSOLVING LIEN OF EXECUTION.**

At a Stated Term of the United States  
District Court for the .....  
District of ....., held at  
the United States Court House, City of..  
....., on the ....., day of  
....., 19...

Present:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

No. ....

*Bankrupt.*

..... as trustee in bankruptcy of the above named bankrupt  
having applied for an order dissolving and setting aside the lien of the execu-  
tion heretofore issued on the ..... day of ....., by .....  
judgment creditor, against the property of said bankrupt and it appearing  
that the said trustee is entitled to such relief because of the adjudication in  
bankruptcy herein within four months of said levy, now, upon reading and  
filing the petition of ....., the trustee herein, verified the..  
..... day of ....., 19..., and the notice of motion thereon

with proof of due service of said motion papers upon the attorneys for .....  
 ....., execution creditor, and upon the sheriff of the County of ....  
 ..... and all the papers and proceedings herein and, upon motion  
 of ....., attorney for said trustee and petitioner, and no one  
 appearing in opposition thereto, it is

Ordered, that the lien of the said execution creditor, .....,  
 upon the property belonging to the above named bankrupt, now in the hands  
 of the sheriff of ..... County of ....., (or the pro-  
 ceeds of the said execution sale held ....., 19...),  
 upon the execution issued herein on the ..... day of .....,  
 19..., be and hereby is dissolved and discharged, and

It is further ordered, that ....., as sheriff of the County of  
 ....., turn over forthwith, upon payment of his legal  
 fees and expenses, to ....., as trustee in bankruptcy herein, the  
 said property (or moneys) now in his hands as proceeds of the said execution  
 sale of ....., 19...

D. J.

#### NOTES.

**Executions.** Section 67-f.

When lien dissolved.

In re Breslauer (D. C. N. Y.), 10 Am. B. R. 33; 121 Fed. 910.

Effect on Section 67-f of Amendment of 1910 to Section 60-b.

In re Petersen (C. C. A. 7th Cir.), 29 Am. B. R. 26; 200 Fed. 739; 119 C. C. A. 183.

Where proceeds of an execution sale have been turned over to the judgment creditor, who was the purchaser, before the filing of an involuntary petition against the judgment debtor, the latter's trustee cannot, by summary order, recover the property or its proceeds; the remedy, if any, is by plenary action for a preference.

In re Bailey, 16 Am. B. R. 289; 144 Fed. 214.

Levor v. Seiter (N. Y. Sup.), 8 Am. B. R. 459; 69 App. Div. (N. Y.) 33; modif'g 5 Am. B. R. 576; 34 Misc. (N. Y.) 382.

In re Weitzel (D. C. N. Y.), 27 Am. B. R. 370; 191 Fed. 463.

Nelson v. Svea Publishing Co., 178 Fed. 136.

In re Francis Valentine Co., 2 Am. B. R. 188; 93 Fed. 953.

Right of sheriff therein.

In re Kenney (C. C. A. 2nd Cir.), 5 Am. B. R. 355; 105 Fed. 897; 45 C. C. A. 113; aff'g 3 Am. B. R. 353; 97 Fed. 554.

Aff'd, sub nom. Clarke v. Larremore (U. S. Sup.), 9 Am. B. R. 476; 188 U. S. 486; 47 L. Ed. 555.

In re W. J. Schmidt and Co. (C. C. A. 2nd Cir.), 21 Am. B. R. 593; 165 Fed. 1006, 91 C. C. A. 665.

When execution issued prior to four months' period may be deemed dormant and may be assailed by trustee. In re Monarch Acetylene Co. (D. C. N. Y.), 36 Am. B. R. 598. In re Zeis (D. C. N. Y.), 36 Am. B. R. 581; 229 Fed. 472.

Stay of sale under an execution upon a judgment recovered more than four months before filing of petition.

In re Vastbinder, 13 Am. B. R. 148; 132 Fed. 718.

In re Baughman, 15 Am. B. R. 23; 138 Fed. 742.

See, In re Easley, 1 Am. B. R. 715; 93 Fed. 419.



Property in hands of trustee not subject to levy under an execution against the bankrupt.

In re Franklin Lumber Co., 17 Am. B. R. 443; 147 Fed. 852.

FORM No. 326.

**PETITION TO DISSOLVE LIEN OF GARNISHEE ORDER AND EXECUTION UPON BANKRUPT'S EARNINGS AND DIRECTING SHERIFF TO PAY.**

United States District Court,

..... District of .....

In Bankruptcy.

IN THE MATTER

OF

No. ....

.....  
*Bankrupt.*

To the District Court of the United States,

for the ..... District of .....

The petition of ..... respectfully shows and alleges:

*First.* That he is the trustee in bankruptcy herein.

*Second.* That on the ..... day of ....., 19..., the above named ..... upon his voluntary petition, was duly adjudicated a bankrupt in this Court, and on the ..... day of ....., 19..., your petitioner was duly appointed trustee in bankruptcy of said bankrupt duly qualified and is still acting as such trustee.

*Third.* That on or about the ..... day of ....., 19..., as petitioner is informed and verily believes an execution was duly issued, pursuant to Section 1391 of the Code of Civil Procedure of the State of ..... out of the Supreme Court, at the instance of one ....., judgment creditor, against the said ..... salary as earned and coming due from ..... his employer, and that same was lodged with the sheriff of the County of ..... on said date; that under and pursuant to said garnishee order, the said sheriff has collected and still retains from his said salary, the sum of \$..... per week for ..... weeks making a total of \$....., since the adjudication in bankruptcy herein.

*Fourth.* That on or about the ..... day of ....., 19..., said bankrupt ..... obtained a stay from this Court restraining the

sheriff from taking any further action in reference to said garnishee order and from paying out the amount already collected thereon and same was duly served upon the sheriff of the County of .....

*Fifth.* That petitioner is informed and verily believes that the said judgment of ..... hereinbefore referred to against said bankrupt and under which the garnishee order was obtained was based (upon a promissory note made by the said bankrupt) and is such a debt as that a discharge in bankruptcy would be a release thereto and your petitioner is informed and verily believes that the said ....., the bankrupt herein, has made an application for his discharge in bankruptcy and that same has been granted on the ..... day of ....., 19...

*Sixth.* That by virtue of his appointment and qualification as trustee in bankruptcy herein and under Section 67 (f) of the Bankruptcy Act of 1898 and the amendments thereto, petitioner alleges that said money retained by the sheriff of the County of ..... by virtue of the garnishee order aforesaid from the bankrupt's salary to the date of the adjudication herein is the property of the bankrupt's estate, said lien thereon of the garnisheeing creditor having been obtained within four months of the adjudication, and that petitioner is entitled thereto.

*Seventh.* Your petitioner is informed and verily believes that said garnisheeing creditor on the .... day of ....., 19..., filed in the office of the referee herein a proof of claim based upon the same judgment under which the garnishee order was obtained.)

*Eighth.* Due demand for said monies has been made in writing by your petitioner upon the sheriff of the County of .....

*Ninth.* No previous application has been made for the order hereinafter asked for.

Wherefore, your petitioner prays for an order dissolving the lien of the said execution of the ..... day of ..... 19..., and directing the sheriff of the County of ..... to pay over to petitioner, as trustee in bankruptcy of the above named bankrupt, the sum of \$....., or such amount as the said sheriff may have collected from the salary of the bankrupt herein to ....., 19..., the date of the adjudication, and interest thereon, less his lawful fees and expenses, as belonging to this estate in bankruptcy and modifying to that extent stay contained in the order of this Court, dated ....., 19..., and for such other and further relief as to this Court may seem just and proper.

Dated ....., 19...

.....  
*Petitioner.*

[Verification.]

**FORM No. 327.****NOTICE OF MOTION THEREON.**

United States District Court,  
 ..... District of .....:  
 In Bankruptcy.

IN THE MATTER	}	No. ....
OF		
..... <i>Bankrupt.</i>		

Sirs:

Please take notice, that on the petition of ....., verified the ..... day of ....., 19.., the voluntary petition and adjudication of the above named bankrupt, filed and entered on the ..... day of ....., 19.., and the discharge in bankruptcy herein granted on the ..... day of ....., 19.., and the injunction order heretofore granted herein, dated ....., 19.., and all the papers and proceedings herein, the undersigned will move this Court at a term thereof to be held in the United States Court House, ....., City of ....., on the .... day of ....., 19.., at .... o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard for an order that the lien of the execution heretofore issued against the salary of the above named bankrupt to the sheriff of the County of ....., pursuant to section 1391 of the Code of Civil Procedure, out of the ..... Court, County of ....., at the instance of one ....., judgment creditor, against the said ..... be dissolved and discharged and that the sheriff of the County of ..... be directed to pay over to petitioner, as trustee in bankruptcy of the above named bankrupt, the sum of \$. .... or such amount as the said sheriff may have collected from the salary of the bankrupt herein to ....., 19.., the date of the adjudication, and interest thereon, less his lawful fees and expenses, as belonging to this estate in bankruptcy; and modifying to that extent the stay contained

in the order of this Court, dated ....., 19.., and for such other and further relief in the premises as may be just and proper.

Dated ....., 19..

Yours, etc.,

.....  
*Attorney for Trustee in Bankruptcy.*

..... Street, ..... City of .....

To: Messrs.....,

Attorneys for .....,

*Judgment Creditor,*

..... St. ....

To: Messrs.....,

Attorneys for ....., Bankrupt,

.....,

..... St., .....

To: ....., Esq.,

Sheriff of the County of .....

### FORM No. 328.

#### ORDER DISSOLVING LIEN OF EXECUTION AGAINST SALARY, MODIFYING STAY AND DIRECTING SHERIFF TO PAY OVER TO TRUSTEE.

At a Stated Term of the District Court of the United States, held in and for the ..... District of ....., at the United States Court House, ..... City of ..... on the ..... day of ....., 19..

PRESENT:

Hon.....,

*District Judge.*

IN THE MATTER

OF

No.....

.....  
*Bankrupt.*

..... trustee in bankruptcy of the above named bankrupt, having made an application for an order modifying injunction order

heretofore granted herein, under date of ....., 19.., and that the lien of the execution heretofore issued against the salary of the above named bankrupt to the sheriff of ....., pursuant to section 1391 of the Code of Civil Procedure out of the Supreme Court, ....., at the instance of one ....., judgment creditor against the said ....., ....., be dissolved and discharged and that the sheriff of the County of ..... be directed to turn over to petitioner, as trustee in bankruptcy of the above named bankrupt, the amount collected by the said sheriff pursuant to said execution to ....., 19.., the date of the adjudication herein, less his lawful fees and expenses, on the ground that said monies are the property of this estate in bankruptcy and due notice of said application having been given to the attorneys for said judgment creditor and for the bankrupt and to the sheriff of the County of ....., now upon reading and filing the petition of ....., trustee, verified ....., 19.., and all the proceedings herein and it appearing to my satisfaction that the execution issued to the said sheriff against the bankrupt's salary pursuant to section 1391 of the Code of Civil Procedure was obtained within four months of the adjudication in bankruptcy herein and that said bankrupt has been granted a discharge in bankruptcy and that the monies collected by the said sheriff, pursuant to said execution belong to this estate, now upon motion of ....., attorney for said trustee, it is

Ordered, that the injunction order issued by this Court, dated ..... 19.., be and the same hereby is modified and the sheriff of the County of ..... is hereby directed to turn over to ....., as trustee in bankruptcy of the above named bankrupt, the sum of \$....., or such amount as he may have collected out of the salary of the bankrupt herein to ....., 19.., the date of the adjudication, and interest thereon, less his lawful fees.

.....  
U. S. D. J.

## NOTES.

Dissolution of lien of garnishment.

Hall v. Chicago B. and Q. Ry. Co. (Neb. Sup. Ct.), 25 Am. B. R. 53.

In re Van Buren, 20 Am. B. R. 896; 164 Fed. 883.

In re Driggs, 22 Am. B. R. 621; 171 Fed. 897.

Maas v. Kuhn, 22 Am. B. R. 91; 130 App. Div. (N. Y.) 68; 114 N. Y. Supp. 444.

In re Sims, 23 Am. B. R. 899; 176 Fed. 645.

In re Ludeke, 22 Am. B. R. 467; 171 Fed. 292.

In re Maher, 22 Am. B. R. 290; 169 Fed. 997.

Effect of order under Section 1391, New York Code.

Uner v. Doran, 34 Am. B. R. 410; 167 App. Div. (N. Y.) 259; 152 N. Y. Supp. 655.

Prior to four months' period not avoided.

In re Culpepper, 31 Am. B. R. 762.



FORM No. 329.

ORDER FOR PAYMENT OF SHERIFF'S FEES FROM PROCEEDS OF  
PROPERTY DELIVERED BY HIM TO RECEIVER.

At a Stated Term of the District Court  
of the United States for the .....  
District of ....., held at the  
Court House, in the City of ....., on  
the ..... day of ....., 19...

PRESENT:

Hon.....,  
*District Judge.*

IN THE MATTER  
OF  
.....  
*Bankrupt.*

The sheriff of the County of ..... having levied upon property  
of the bankrupt herein by virtue of a writ of execution issued out of the  
..... Court of the State of ..... against the property of  
the said bankrupt and said levy having been made prior to the filing of the  
petition in bankruptcy herein and the said sheriff being at that time in pos-  
session of the said property by virtue of said writ; and the lien of said levy  
having been made void by reason of the filing of the petition in bankruptcy  
herein; and certain fees being due the sheriff of the County of .....  
by reason of said levy, now upon the annexed consent of .....,  
attorney for the receiver herein and ..... attorney for the  
sheriff of the County of ....., it is

Ordered, that the fees of the sheriff of the County of ..... be  
and they hereby are taxed at the sum of ..... dollars, and that the said  
sheriff retain a first lien on the said property or the proceeds thereof for the  
amount of his said fees and it is hereby further,

Ordered, that the sheriff of the County of ..... turn over and  
deliver to the said receiver all the property so levied upon by the sheriff, and  
it is further

Ordered, that the receiver hold the said property subject to said lien of ..... , sheriff of the County of ..... , in the sum of ..... dollars, until said lien is satisfied and discharged by payment and out of the first proceeds therefrom pay to the said sheriff of the County of ..... , his fees as aforesaid and that such payment be made by the said receiver to the said sheriff notwithstanding any settlement or disposition of these proceedings in bankruptcy.

Dated ..... , 19...

..... ,

*U. S. D. J.*

**FORM No. 330.****ANSWER OF BANKRUPT TO RULE TO SHOW CAUSE FOR CONTEMPT.**

United States District Court,  
 for the ..... District of .....  
 In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No.....
---	---	---------

Now comes ..... and in obedience to the rule [or order to show cause] issued by this court, says that an attachment for contempt ought not to issue against him for disobedience of the order of ....., referee, for the following reasons:

1. He says that he cannot comply with the order of this court, because he has not the property ordered turned over or sum of money ordered by said referee to be paid to the trustee herein.

2. That the said order of said referee is not a lawful order within the contemplation of the Bankruptcy Act, or such an order, the disobedience of which would be punishable by attachment for contempt.

3. Said order is in effect a judgment directing the payment of money, and is not enforceable by proceedings in contempt.

4. Section 29-d of the Bankruptcy Act provides that such offenses as those charged by the referee in his finding, shall be punishable only in the manner prescribed therein, to wit, by information or indictment.

Wherefore said ..... prays the court that said rule [or order to show cause] may be dismissed, and that he may be discharged.

.....,  
*Attorney for bankrupt.*

(Verification.)

FORM No. 331.

**ORDER ADJUDGING BANKRUPT IN CONTEMPT FOR FAILURE TO  
TURN OVER MONEY.**

At a Stated Term of the United States  
District Court for the .....  
District of ....., held at  
the United States Court House, City of....  
....., on the ..... day of  
....., 19...

Present:

Hon. ....,  
District Judge.

IN THE MATTER  
OF

No.....

.....  
*Bankrupt.*

A motion having been made herein by ....., trustee of the  
above named bankrupt, to punish the said ....., bankrupt, for  
contempt of court in having disobeyed the lawful order of .....,  
referee in bankruptcy, dated ....., 19.., directing the said bank-  
rupt, ....., to pay over to his said trustee in bankruptcy, the sum  
of \$ ..... and the same having come on for hearing, now on reading and  
filing the annexed petition of ....., the trustee aforesaid,  
verified ....., 19.., the annexed certificate of said referee, dated  
....., 19.., the annexed order to show cause, dated .....  
19.., with proof of due service of said motion papers and order to show cause  
on said bankrupt; and due deliberation having been had thereon, and after  
hearing ....., counsel for said trustee, in support of said  
motion, and ....., Esq., attorney for said bankrupt in oppo-  
sition thereto, on motion of ....., attorney for said trustee, it is

Ordered, adjudged and determined,

First, That the report of the referee herein, dated ....., 19..  
be and the same hereby is in all respects confirmed.

Second. That the said bankrupt, ....., is guilty of a contempt  
of this court in having willfully and deliberately disobeyed said lawful order

of said referee and in neglecting and refusing, as in said order directed, to pay over to his said trustee the sum of \$.....

Third. That the said bankrupt, ....., residing at ..... Street, City of ....., be forthwith arrested by the Marshal of this District and brought before this Court, this day, or as soon thereafter as possible, to be committed, as for the contempt aforesaid, and to be imprisoned by the United States Marshal for the ..... District of ....., until he shall obey said order and pay over to said trustee, ....., the sum of \$..... as therein directed, or until further order of this Court.

.....,  
*U. S. D. J.*

#### NOTES.

**Contempt proceedings.** Act. Sections 2 (13) (15) (16), 41-a, b.

Cross references, sections 20-a, 21 (a), 38-a (2).

**General Orders X, XXII, XXX.**

Referee may certify the facts. He has no power to punish for contempt.

Bank of Ravenswood v. Johnson (C. C. A. 4th Cir.), 16 Am. B. R. 206; 143 Fed. 463; 74 C. C. A. 597.

In re Miller, 5 Am. B. R. 184; 105 Fed. 57.

In re Haring (D. C. Mich.), 27 Am. B. R. 285; 193 Fed. 168; aff'd, 203 Fed. 229; 121 C. C. A. 435.

Bankrupt's disobedience of referee's order.

In re Sorkin (D. C. N. Y.), 20 Am. B. R. 637; 166 Fed. 831.

**Civil and criminal contempt distinguished.** Remedial and punitive.

Fixed term of imprisonment only in latter.

Gompers v. Buck Stove Co., 221 U. S. 418; 55 L. Ed. 797.

In re Kahn (C. C. A. 2nd Cir.), 30 Am. B. R. 322; 204 Fed. 581; 123 C. C. A. 107.

In re Farkas (D. C. N. Y.), 30 Am. B. R. 337; 204 Fed. 343.

In re Probst (C. C. A. 2nd Cir.), 30 Am. B. R. 600; 205 Fed. 512; 123 C. C. A. 580.

Criminal contempt. Fixed term of imprisonment upheld.

United States v. Appel (D. C. N. Y.), 31 Am. B. R. 154; 211 Fed. 495.

In re Kaplan Bros. (C. C. A. 3rd Cir.), 32 Am. B. R. 305; 213 Fed. 753; 130 C. C. A. 267.

Refusal of witness to answer questions before special master.

In re Automatic Musical Co., 30 Am. B. R. 328; 204 Fed. 334.

Disobedience of witness. Punished for persistent, "defective memory."

In re Schulman, 21 Am. B. R. 288; 160 Fed. 237; aff'd (C. C. A. 2nd Cir.), 23 Am. B. R. 809; 177 Fed. 191; 101 C. C. A. 361.

Persistence of bankrupt in making evasive answers, punishable.

In re Singer, 23 Am. B. R. 28; 174 Fed. 208.

In re Gitkin, 21 Am. B. R. 113; 164 Fed. 71.

Wilful false swearing by bankrupt.

In re Fellerman (D. C. N. Y.), 17 Am. B. R. 785; 149 Fed. 244; Ex parte Bick (C. C. N. Y.), 19 Am. B. R. 68; 155 Fed. 908.

In re Bronstein (D. C. N. Y.), 24 Am. B. R. 524; 182 Fed. 349.

In re Michaels (D. C. N. Y.), 28 Am. B. R. 38.

Bankrupt's failure to file schedules.

In re Schulman & Goldstein (D. C. N. Y.), 20 Am. B. R. 707; 164 Fed. 440.

Failure to produce document.

In re Howard, 2 Am. B. R. 582; 95 Fed. 415.



In re Fixen, 2 Am. B. R. 822; 96 Fed. 748.

In re Wilson, 8 Am. B. R. 612; 116 Fed. 419.

In re Soloway & Katz (D. C. Conn.), 28 Am. B. R. 225; 196 Fed. 132.

In re Herr (No. 1) (D. C. Pa.), 25 Am. B. R. 141.

When not in contempt.

In re Johnson & Knox Lumber Co. (C. C. A. 7th Cir.), 18 Am. B. R. 50; 151 Fed. 207; 80 C. C. A. 259.

In re Watts (U. S. Sup.), 10 Am. B. R. 113; 190 U. S. 1; 47 L. Ed. 933.

Practice.

Contents and allegations of petition.

United States v. Goldstein, 12 Am. B. R. 755; 132 Fed. 789.

First National Bank v. Cole (C. C. A. 1st Cir.), 16 Am. B. R. 382; 144 Fed. 392; 75 C. C. A. 330.

Sufficiency in charging perjury in testimony before referee.

Magen v. Campbell (C. C. A. 3rd Cir.), 26 Am. B. R. 594; 186 Fed. 675; 108 C. C. A. 531; rev'g In re Magen, 24 Am. B. R. 63; 179 Fed. 572.

Attachment of person may be asked.

Issues raised by answering affidavits may be referred.

Statute must be strictly followed.

In re Gitkin (*supra*).

Right of respondent to notice and to be heard.

In re Banzai Mfg Co. (C. C. A. 2nd Cir.), 25 Am. B. R. 497; 183 Fed. 298; 105 C. C. A. 510.

In re Stavrahn (C. C. A. 2nd Cir.), 23 Am. B. R. 168; 174 Fed. 330; 98 C. C. A. 202.

Certification by referee not a jurisdictional requirement to enable the court to make the order, but a procedural necessity.

United States ex rel. Birnbaum v. Henkel, 26 Am. B. R. 199; 185 Fed. 553.

Order of commitment not invalid because it does not run in name of the United States.

Mueller v. Nugent, 7 Am. B. R. 224; 184 U. S. 1; 46 L. Ed. 405.

Pleading by respondent.

In re Goodrich (C. C. A. 1st Cir.), 25 Am. B. R. 787; 184 Fed. 5; 106 C. C. A. 207.

An outside creditor without previous application to the court for leave to intervene has no standing to move to punish bankrupt for contempt.

In re Cantor (C. C. A. 2nd Cir.), 32 Am. B. R. 768; 215 Fed. 61; 131 C. C. A. 369.

Referee's order must be based upon sufficient findings of fact to inform respondent fully and completely of action he is required to take or perform.

In re Rogowski, 21 Am. B. R. 553; 166 Fed. 165.

Contempt in failure to obey "turn over" order.

Mere denial of possession, insufficient as a defense.

In re Stavrahn (C. C. A. 2nd Cir.) (*supra*).

In re Weber Co. (C. C. A. 2nd Cir.), 29 Am. B. R. 217; 200 Fed. 404; 118 C. C. A. 556.

In re Cummings (No. 2) (D. C. Pa.), 26 Am. B. R. 130; 186 Fed. 1020.

When should be granted.

In re Heyman (D. C. Pa.), 34 Am. B. R. 108; 214 Fed. 491.

Civil contempt; proceedings for, cannot be reviewed by writ of error under Circuit Court of Appeals Act or by appeal under Sec. 24-a of the Bankruptcy Act.

Freed v. Central Trust Co. of Illinois (C. C. A. 7th Cir.), 33 Am. B. R. 64; 215 Fed. 873; 132 C. C. A. 7.

See, Clay v. Waters (C. C. A. 8th Cir.), 24 Am. B. R. 293; 178 Fed. 385; 101 C. C. A. 645.

**Ability to comply.****Presumption from recent possession.**

Stuart v. Reynolds (C. C. A. 5th Cir.), 29 Am. B. R. 412; 204 Fed. 709; 123 C. C.

A. 13; aff'g In re Reynolds, 27 Am. B. R. 200; 190 Fed. 967.

In re Richards, 25 Am. B. R. 176; 183 Fed. 501.

In re Deuell (D. C. Mo.), 4 Am. B. R. 60; 100 Fed. 633.

**Form of order.**

Freed v. Central Trust Co. of Ill. (*supra*).

When bankrupt should be released from custody.

In re Cummings (No. 3) (D. C. Pa.), 26 Am. B. R. 477; 188 Fed. 767.

In re Karp (D. C. N. Y.), 28 Am. B. R. 559; 196 Fed. 998.

**FORM No. 332.**

**ORDER PURGING OF CONTEMPT.**

At a Stated Term of the United States  
District Court for the .....  
District of ....., held at  
the United States Court House, City of....  
....., on the ..... day of  
....., 19...

Present:

Hon. ....,  
District Judge.

IN THE MATTER  
OF

.....  
*Bankrupt.*

An order having been made herein on the .... day of ....., 19..., directing that ....., the above named bankrupt be imprisoned in the ..... jail of this county, for a period of ..... days for disobedience of an order of the referee herein, made on the ..... day of ....., 19..., and the said order of the referee having now been complied with by the said ....., bankrupt, as appears by the certificate of said referee, it is on motion of ....., attorney for said bankrupt,

Ordered, that the said ..... be, and he hereby is purged of contempt for his disobedience to the order of court.

It is further ordered, that said ....., upon payment of costs taxed at \$ ....., be now released and discharged from said imprisonment, and the marshal is hereby ordered to deliver a copy of this order to the sheriff of ..... County, in the City of ....., who is hereby directed upon receipt thereof, to release the said ..... from his custody.

.....  
D. J.

FORM No. 333.

PETITION TO RE-OPEN ESTATE.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER  OF  .....  <i>Bankrupt.</i>	} No. ....

To the District Court of the United States,  
for the ..... District of .....:

The petition of ..... respectfully shows:

1. That he is a creditor herein.
2. That on the ..... day of ....., 19.., ..... was duly adjudicated a voluntary (or involuntary) bankrupt in this court, and filed sworn schedules therein of his debts and assets. That thereafter at the first meeting of creditors of said bankrupt, ..... of ....., was duly elected trustee and duly qualified.
3. That petitioner on the ..... day of ....., 19.., duly filed his claim against the estate of said bankrupt and the same was duly allowed.
4. That thereafter on the ..... day of ....., 19.., the said bankrupt was discharged of his debts, and on the ..... day of ....., 19.., the said trustee presented his final account to the court, the same was passed and allowed, the trustee discharged of his trust, and the case closed.
5. Your petitioner alleges that in the schedules filed and verified herein by the bankrupt he made no mention of the following property, then belonging to him and properly a part of his said estate in bankruptcy:.....  
.....  
.....  
.....  
That said property was fraudulently and intentionally omitted from said schedules and concealed by the bankrupt from his trustee. That the said ..... is still in possession and control of said property.
6. That your petitioner has now for the first time discovered the facts concerning this property and the fraudulent concealment thereof from the following sources: .....  
.....  
.....

7. That no previous application has been made for the order asked for herein.

Wherefore, your petitioner prays for an order under Sec. 2 (8) of the Bankruptcy Act, reopening the estate of the said ....., bankrupt, for the purpose of administering upon the afore-mentioned property as a part of the estate herein, and that said proceeding be re-referred for proper action to the referee herein and for such other and further relief as to the court shall seem just and proper.

.....  
Petitioner.

[Verification.]

NOTES.

**Reopening estate. Sec. 2, (8).**

Court may reopen an estate whenever it appears it was closed before being fully administered.

**Allegations of petition.**

In re Newton (C. C. A. 8th Cir.), 6 Am. B. R. 52; 107 Fed. 429; 46 C. C. A. 399. In re Paine, 11 Am. B. R. 351; 127 Fed. 246. In re Ryburn, 16 Am. B. R. 514; 145 Fed. 662. Vary v. Jackson (C. C. A. 5th Cir.), 21 Am. B. R. 334; 164 Fed. 840; 90 C. C. A. 602.

Application must be made by party interested and who would be benefited by such reopening.

In re Meyer (D. C. Ore.), 25 Am. B. R. 44; 181 Fed. 904.

Petitioner must show good cause.

In re Soper & Slada, 1 Am. B. R. 193.

Reopening by bankrupt for purpose of amending schedules denied.

In re Spicer, 16 Am. B. R. 802; 145 Fed. 431.

Reopening after discharge permitted in some cases.

In re McKee, 21 Am. B. R. 306; 165 Fed. 269.

Not necessary that petition should show what property was surrendered by bankrupt or what representations were made in his schedules or that any creditor was deceived by the representations in the schedules.

Traub v. Marshall Field & Co. (C. C. A. 5th Cir.), 25 Am. B. R. 410; 182 Fed. 622; 105 C. C. A. 488.

Former trustee has no standing to apply.

In re Paine (*supra*).

When bankrupt's application denied.

In re Spicer, 16 Am. B. R. 802; 145 Fed. 431.

In re Barton's Est., 16 Am. B. R. 569; 144 Fed. 540.

When granted.

In re Pierson, 23 Am. B. R. 58; 174 Fed. 160.

Where time to file claims has expired, a reopened proceeding redounds only to the benefit of those who have proved claims. In re Shaffer, 4 Am. B. R. 728; 104 Fed. 982.

How trustee is to be elected.

Former trustee not *ipso facto* restored to office.

In re Rochester Sanitarium & Bath Co. (C. C. A. 2nd Cir.), 34 Am. B. R. 355; 222 Fed. 22; 137 C. C. A. 560.

Creditors who have not filed claims may not apply to reopen.

In re Paine, 11 Am. B. R. 351; 127 Fed. 246.

Laches in making application.

In re Paine (*supra*).



In re Reese, 8 Am. B. R. 411; 115 Fed. 993; 164 Fed. 840. Vary v. Jackson (*supra*).  
Filing of claims when year has expired.  
In re Pierson (D. C. N. Y.), 23 Am. B. R. 58; 174 Fed. 160.  
Application to reopen addressed to the discretion of the court and its action will not be reversed except for abuse of discretion.  
In re Goldman (C. C. A. 2nd Cir.), 11 Am. B. R. 707; 129 Fed. 212; 63 C. C. A. 370.  
Allegations of petition to reopen must satisfy the court that assets exist.  
In re Newton (*supra*).  
In re Paine (*supra*).  
In re Ryburn, 16 Am. B. R. 514; 145 Fed. 662.  
Act provides no limitation of time within which closed estates may be reopened and the doctrine of laches is applicable when an unreasonable delay has intervened.  
In re Pierson (*supra*).

FORM No. 334.

ORDER REOPENING ESTATE.

At a Stated Term of the District Court  
of the United States for the .....  
District of ....., held at the  
United States Court House, in the .....  
....., City of ....., on  
the ..... day of ....., 19...

PRESENT:  
Hon.....,  
*District Judge.*

IN THE MATTER	}	No.....
OF		
..... <i>Bankrupt.</i>		

Upon reading and filing the petition of ..... verified the ..... day of ....., 19.., praying for an order under Sec. 2(8) of the Bankruptcy Act reopening the estate of the above named bankrupt for the purpose of administering upon certain subsequently discovered assets and upon all the proceedings heretofore had herein and upon motion of ....., attorney for ....., it is  
Ordered, that these proceedings be reopened for the purpose of administering on and disposing of certain assets belonging to the estate of said bankrupt as set forth in the annexed petition; and it is further

Ordered, that said matter be referred to ....., Esq., as referee in bankruptcy for such further proceedings as may be necessary; (and it is further

Ordered, that the discharge of ....., Esq., as trustee of the estate of the above named bankrupt heretofore made herein be and the same hereby is vacated and the said ....., as trustee before taking possession or attempting to take possession of such unadministered assets file with the clerk of this Court a bond in the sum of \$..... to be approved by a judge of this Court, before the filing thereof).

.....,  
D. J.

### FORM No. 335.

#### PETITION FOR ALLOWANCE BY ATTORNEY FOR PETITIONING CREDITORS.

United States District Court,  
for the ..... District of .....

IN THE MATTER

OF

} In Bankruptcy. No.....

.....  
*Bankrupt.*

To the District Court of the United States,  
for the ..... District of .....

The petition of ..... respectfully shows and alleges:

1. That he is the attorney for the petitioning creditors herein.
2. That on the ..... day of ....., petitioner on behalf of ..... and others, petitioning creditors herein, prepared an involuntary petition in bankruptcy and petition and proposed order for the appointment of a receiver and procured a consent to the appointment of a receiver from the said bankrupt doing business at No. .... City of ..... (or procured the requisite cost bond on behalf of petitioning creditors). That on the ..... day of ....., 19.., petitioner filed the involuntary petition in bankruptcy in this Court (together with the cost bond of the petitioning creditors) and made the application to the District Judge then sitting in bankruptcy for the appointment of a receiver of the property of the said alleged bankrupt.
3. That on said day this Court appointed ..... Esq., as receiver.
4. That thereafter petitioner caused a certified copy of the order of appointment to be served on such officer.
5. That on the ..... day of ..... 19.., an answer was filed

herein by ... the bankrupt (or a creditor of said bankrupt), and the issues raised were thereafter brought to trial by your petitioner on the ..... day of ....., 19.., resulting in a decree of adjudication herein.

[Here allege in detail services rendered on the trial.]

6. That petitioner has received no compensation for his services rendered in this proceeding and deems same to be reasonably worth the sum of \$.....

7. Petitioner has incurred the following disbursements as attorney for the petitioning creditors, none of which has been repaid, to wit: [Schedule of disbursements.]

Wherefore, petitioner prays for such allowance for the services rendered by him in this proceeding on behalf of the petitioning creditors as to the Court may seem just and reasonable, and for his disbursements.

.....,  
*Petitioner.*

[Verification.]

#### NOTES.

##### Compensation of attorney for petitioning creditors.

In re Southern Steel Co., 22 Am. B. R. 476; 169 Fed. 702. In re Baxter & Co. (C. C. A. 2nd Cir.), 18 Am. B. R. 450; 154 Fed. 22; 83 C. C. A. 106.

In re Young, 16 Am. B. R. 106; 142 Fed. 891.

In re Hart & Co., 16 Am. B. R. 725.

In re Felson, 15 Am. B. R. 185; 139 Fed. 275.

In re Goldville Mfg. Co., 10 Am. B. R. 552; 123 Fed. 579.

In re Carr, 9 Am. B. R. 58; 117 Fed. 572.

Smith v. Cooper, 9 Am. B. R. 755; 120 Fed. 230.

In re Curtiss, 4 Am. B. R. 17; 100 Fed. 784.

In re Burns, 3 Am. B. R. 296; 97 Fed. 926.

In re Silverman & Schoor, 3 Am. B. R. 227; 97 Fed. 325.

In re Stratemeyer, 14 Am. B. R. 120.

No fee for filing a second petition.

Frank v. Dickey (C. C. A. 8th Cir.), 15 Am. B. R. 155; 139 Fed. 744; 77 C. C. A.

562.

Fees of attorneys assisting in recovering assets.

In re Medina Quarry Co. (C. C. A. 2nd Cir.), 27 Am. B. R. 466; 191 Fed. 805;

112 C. C. A. 329; rev'g 25 Am. B. R. 405.

In re R. E. Smith (D. C. N. J.), 32 Am. B. R. 363.

In re Sage (D. C. Ia.), 35 Am. B. R. 625; 225 Fed. 397.

In re Gillaspie (D. C. W. Va.), 27 Am. B. R. 59; 190 Fed. 80.

No fee for services necessitated by own negligence.

In re Francis Levy Outfitting Co., Ltd., 29 Am. B. R. 8 and footnote.

Payment for nominal services out of proceeds of mortgaged property.

In re Freeman (D. C. Ga.), 27 Am. B. R. 16; 190 Fed. 48.

Attorneys who file a petition defective and insufficient to warrant an adjudication, which was made by other creditors on another petition are not entitled to an allowance of fees from estate.

In re Fischer (C. C. A. 2nd Cir.), 23 Am. B. R. 427; 175 Fed. 531; 99 C. C. A. 153.

But one allowance may be made.

In re Coney Island Lumber Co. (D. C. N. Y.), 29 Am. B. R. 91; 199 Fed. 197.

When divided upon consolidation of petitions.

In re McCracken & McLeod, 12 Am. B. R. 95; 129 Fed. 621.

FORM No. 336.

**ANSWER OF ASSIGNEE FOR BENEFIT OF CREDITORS TO RULE TO  
TURN OVER PROPERTY TO RECEIVER.**

United States District Court,  
for the ..... District of .....  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER OF</p> <p style="text-align: center;">..... <i>Bankrupt.</i></p>	}	No.....
---	---	---------

....., for an answer to the order herein to show cause why he should not pay over to ....., Esq., the receiver in bankruptcy herein, the sum of \$ ..... as shown in his report as having been paid to ....., and \$ ..... to ....., Esq., says that said sums were paid them respectively while he was acting as assignee before any proceedings herein, as already appears in his report herein. He says further that as assignee he has no money or property or means of any kind with which to pay said money or any part thereof.

He respectfully submits to the court that he ought not to be compelled to pay said money herein.

This respondent says further that long before the petition in this proceeding was filed and before he had any knowledge, information or intimation that it was intended to be filed, and relying upon it that he would be permitted to wind up his trust under the deed of assignment for the bankrupt shown in the record in this proceeding, he filed his petition and brought action in the State court as appears in this record, which is still pending, and he is still subject to the jurisdiction and orders of said State court requiring him to settle his accounts there and to be responsible there for all his acts and doings under said deed of assignment.

He submits to this Honorable Court that this answer be held sufficient and the order to show cause herein should be denied.

.....,  
*Assignee.*

(Verification.)



## NOTES.

**Jurisdiction to compel assignee or receiver in State court to account.**

Louisville Trust Co. v. Cominger (U. S. Sup.), 7 Am. B. R. 421; 184 U. S. 18; 46 L. Ed. 413; aff'g Sinsheimer v. Simonson, 5 Am. B. R. 537; 107 Fed. 898; 47 C. C. A. 648.

In re Louis Neuburger, Inc. (D. C. N. Y.), N. Y. Law Jour. July 3, 1916.

In re Thompson (C. C. A. 2nd Cir.), 11 Am. B. R. 719; 128 Fed. 575; 63 C. C. A. 217; aff'g 10 Am. B. R. 242; 122 Fed. 174. Bryan v. Bernheimer, 5 Am. B. R. 623; 181 U. S. 188; 45 L. Ed. 814.

In re Manning (D. C. S. C.), 10 Am. B. R. 497; 123 Fed. 181.

In re Hays (C. C. A. 6th Cir.), 24 Am. B. R. 691; 181 Fed. 674; 104 C. C. A. 656.

Under general assignment made within four months assignee held not to be an adverse claimant as regards trustee in bankruptcy.

In re McCrum (C. C. A. 2nd Cir.), 32 Am. B. R. 604; 214 Fed. 207; 130 C. C. A. 555.

Improper for Bankruptcy Court to summarily order receiver in State court to pay over to trustee. He is entitled to present his accounts to State court.

Loveless v. Southern Grocer Co. (C. C. A. 5th Cir.), 20 Am. B. R. 180; 159 Fed. 415; 86 C. C. A. 395.

See Bank of Andrews v. Gudger, Receiver (C. C. A. 4th Cir.), 32 Am. B. R. 11; 212 Fed. 49; 128 C. C. A. 505.

Where assignee consents to a judicial examination of his account by the Bankruptcy Court he is bound by its determination and orders.

In re Banzai Mfg Co. (C. C. A. 2nd Cir.), 25 Am. B. R. 497; 183 Fed. 298; 105 C. C. A. 510.

When assignee appears and submits his account, the court does not lose jurisdiction to require him to turn over the property to the trustee because he asserts title to a part of such property in himself.

In re Thompson (*supra*).

Improvident expenditures. In re Banzai Mfg Co. (*supra*).

Duties and liabilities of.

In re Sobol (D. C. N. Y.), 35 Am. B. R. 804; 227 Fed. 853.

In re Karp (D. C. Mass.), 36 Am. B. R. 414.

When trustee in bankruptcy may maintain action upon assignee's bond to recover the amount which the assignee failed to turn over.

Cohen v. American Surety Co. (N. Y. Ct. of App.), 20 Am. B. R. 65; 192 N. Y. 227; aff'g 19 Am. B. R. 901.

**Allowance to assignees for the benefit of creditors.**

Where an assignee remains in possession of the property with consent of the referee and performs services of value to the estate, his expenses and compensation for such services may be allowed upon the theory of, "preservation of the estate."

In re Pattee (D. C. Ct.), 16 Am. B. R. 450; 143 Fed. 994.

In re Pauley, 2 Am. B. R. 333.

See, as to commissions on property turned over to trustee in bankruptcy.

In re Cohen (L. M. Stern & Co.), (Sup. Ct. Kings Co. N. Y.), (N. Y. Law Jour. Dec. 7, 1914).

See also, New York Debtor and Creditor Law, Sec. 21, Laws 1914, Chap. 366, Sec. 8. Allowance to State court receiver.

In re Weedman Stave Co., 29 Am. B. R. 460; 199 Fed. 948.

In re Standard Fullers Earth Co., 26 Am. B. R. 562; 186 Fed. 578.

Must appear that services were an actual benefit to estate.

In re Zier & Co., 15 Am. B. R. 646; 142 Fed. 102; 73 C. C. A. 326; aff'g, s. c., 11



Am. B. R. 527; 127 Fed. 399. In re Allison Lumber Co., 14 Am. B. R. 78; 137 Fed. 643.

Summers v. Abbott (C. C. A. 8th Cir.), 10 Am. B. R. 254; 122 Fed. 36; 58 C. C. A. 352.

**Services of an assignee beneficial to estate entitled to priority of payment.**

Randolph v. Scruggs (*infra*).

Voluntary trustees.

In re Marble Products Co., 29 Am. B. R. 384; 199 Fed. 668.

**Attorneys for assignee.**

As to fees paid attorneys for general assignees paid prior to bankruptcy.

Louisville Trust Co. v. Cominger (U. S. Sup.), 7 Am. B. R. 421; 184 U. S. 18; 46 L. Ed. 413.

In re Klein & Co. (D. C. N. Y.), 8 Am. B. R. 559; 116 Fed. 523.

Compare In re Mays (D. C. W. Va.), 7 Am. B. R. 764; 114 Fed. 600.

See, In re Thompson, 11 Am. B. R. 719; 128 Fed. 575; 63 C. C. A. 217; aff'g 10 Am. B. R. 242; 122 Fed. 174.

No allowance save in unusual cases.

In re Pauley (*supra*).

Randolph v. Scruggs, 10 Am. B. R. 1; 190 U. S. 533; 47 L. Ed. 1165; where claim was allowed as beneficial to estate.

Must appear that the assignment was not made to avoid bankruptcy.

In re Zier & Co. (*supra*).

And free from fraud.

In re Chase (C. C. A. 1st Cir.), 10 Am. B. R. 677; 124 Fed. 753; 59 C. C. A. 629.

Wilbur v. Watson (D. C. R. I.), 7 Am. B. R. 54; 111 Fed. 493.

Stearns v. Flick (D. C. O.), 4 Am. B. R. 723; 103 Fed. 919.

FORM No. 337.

ORDER DESIGNATING DEPOSITORY OF BANKRUPTCY FUNDS.

At a Stated Term of the United States  
District Court for the .....  
District of ....., held at  
the United States Court House, City of....  
....., on the ..... day  
of ....., 19...

In the Matter of the Application of  
.....Bank,  
of the City of....., to be  
designated as a Depository for the  
Money of Bankrupt Estates under  
the provisions of section 61 of chap-  
ter 541 of the Statutes of the  
United States for the Year of 1897-  
98.

Present:

Hon. ....,  
District Judge.

Upon reading and filing the annexed petition of ..... Bank, of the  
City of ....., duly verified, praying to be designated as a  
depository for the money of bankrupt estates, it is

Ordered, that the said ..... Bank be and it is hereby appointed  
and designated as a depository for the money of bankrupt estates pursuant to  
the provisions of Section 61 of Chapter 541 of the Statutes of the United  
States entitled, "An Act to establish an uniform system of bankruptcy  
throughout the United States." The said ..... Bank to execute a  
good and sufficient bond with two or more sureties, or otherwise, according  
to law, in the sum of \$ .....

.....,  
D. J.

## NOTES.

Duty of referee to see that trustees and receivers comply with rule designating depositories and that such officers keep funds of estates in designated depositories.

In re Barrett, 32 Am. B. R. 585.

Depository in possession of New York Superintendent of Banks; Federal court will not summarily order payment over of deposits therein of receivers and trustees in bankruptcy.

In re Bologh (D. C. N. Y.), 25 Am. B. R. 726; 185 Fed. 825.

**FORM No. 338.**

**BOND OF DEPOSITORY.**

Know all men by these presents, That We, the ..... Bank, of the City of ....., principal and ....., ..... of ....., sureties, are held and firmly bound unto the United States of America, in the sum of ..... dollars, (\$ ..... ) lawful money of the United States, for the payment of which sum we do hereby bind ourselves, our respective successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the .... day of ....., 19...

Whereas, the ..... Bank has been designated by the District Court of the United States, for the ..... District of ....., sitting as a Court of Bankruptcy, as a depository for the money of bankrupt estates, pursuant to the provision of an Act of Congress entitled "An Act to establish an uniform system of bankruptcy throughout the United States," approved July 1st, 1898.

Now, therefore, the condition of this obligation is such that if the said ..... Bank shall well and truly account for and pay over all moneys deposited with it as such depository, and shall pay out the same only as provided by the Act of Congress in such case made and provided and the rules of court applicable thereto, and shall abide by all lawful orders and decrees of the court in and by the premises, then this obligation to be void, otherwise to remain in full force and virtue.

In presence of:

.....

.....,

Attest:

.....,

Attest:

(Acknowledgment by principal and sureties.)

FORM No. 339.

REPORT OF REFEREE IN BANKRUPTCY TO CLERK.

For the purposes of complying with sections 53 and 54 of the Bankruptcy Law, Referees in Bankruptcy will carefully fill out this report for each case referred to them immediately upon its conclusion, and transmit the report promptly to the Clerk of the Court having jurisdiction of the case.

A. IN THE DISTRICT COURT OF THE UNITED STATES.

for the ..... District of .....  
In the Matter of ..... Case No. ....  
(Bankrupt)  
Date of filing petition....., 191 ..  
Date of this report....., 191 ..

1. State whether a voluntary or involuntary case.....
2. State whether (a) petition was dismissed; (b) composition confirmed; or (c) case normally administered.....
3. State occupation of bankrupt.....
4. State whether an "asset" or "no-asset" case.....
5. State whether case was filed in forma pauperis and filing fees not afterward paid.....

B. LIABILITIES.

- |  |          |       |
|--|----------|-------|
| 1. Represented by priority, secured, and lien claims.....                                  | \$ ..... | ..... |
| 2. Represented by unsecured claims which have been proved and allowed.....                 | .....    | ..... |
| 3. Represented by unsecured claims, as shown by schedules, which have not been proved..... | .....    | ..... |
| 4. TOTAL LIABILITIES.....  | .....    | ..... |

C. AMOUNTS REALIZED IN THIS PROCEEDING.

- |  |          |       |
|--|----------|-------|
| 1. Total amounts realized or received by receiver (or marshal), trustee, and referee.....  | \$ ..... | ..... |
| 2. Total amount disbursed in conduct of business by receiver (or marshal) and trustee (out of amount shown on preceding line)..... | .....    | ..... |
| 3. Net amount realized after deducting expenses of conducting business, as above shown.....  | .....    | ..... |

D. DISTRIBUTION OF NET ASSETS, AS SHOWN ABOVE (C 3).

- |   |          |       |
|---|----------|-------|
| 1. Total fees and expenses of administration, as analyzed below.....  | \$ ..... | ..... |
| 2. Amount paid to bankrupt on account of or in lieu of exemptions.....  | .....    | ..... |
| 3. Amount paid to priority, secured, and lien creditors.....  | .....    | ..... |
| 4. Amount paid to general creditors.....  | .....    | ..... |
| 5. Payments on reclamation or in commutation of dower, and other payments, if any, not specifically covered by this subdivision "D".... | .....    | ..... |
| 6. Undistributed balance, if any.....   | .....    | ..... |
| 7. TOTAL (must balance with "net amount realized"—see C 3).....   | .....    | ..... |



E. ANALYSIS OF TOTAL FEES AND EXPENSES OF ADMINISTRATION,  
AS STATED ABOVE.

1. Amounts paid to referee on account of fees of every nature, excluding filing fees paid by clerk of court:		
(a) Commissions and 25-cent fees for filing claims. . . \$.....		
(b) Fees as special master, if any.....		
(c) Other fees, if any.....	\$.....	
2. Amount paid to referee on account of expenses, as follows:		
(a) For printing and advertising.....		
(b) For traveling expenses.....		
(c) For office, clerical, and all other expenses.....		
3. Amount paid to receiver (or marshal) and trustee on account of com- missions, excluding filing fee of \$5. ....		
4. Amount paid to attorneys on account of fees.....		
5. All other expenses of administration.....		
TOTAL (must agree with D 1) .....		

F. OTHER DATA PERTAINING TO PROPERTY ADMINISTERED.

1. Appraised value of exemptions set off to bankrupt in kind.....	\$.....	
2. Appraised value of property securing debts of bankrupt which was not administered in bankruptcy court.....		
3. Number and amount of filing fees paid by clerk of court to referee.....	No.....	

I CERTIFY that the foregoing is a true statement, as disclosed by the records in the case.

*Referee in Bankruptcy.*

Address.....

Date of closing case....., 191

## PART XIII.

### SUITS BY TRUSTEE AT LAW AND IN EQUITY.

- FORM No. 340. Complaint by Trustee upon Promissory Note.
341. Complaint against defaulting Purchaser for Deficiency upon Re-sale.
342. Bill in Equity to recover a Preference.
343. Bill in Equity to set aside a Mortgage made within four Months' Period and where Property has been sold free and clear of Liens.
344. Complaint in State Court to declare Secret Trust.
345. Complaint in State Court Action to set aside under Sec. 70-e, Bill of Sale, made beyond four Months' Period.
346. Bill in Equity to recover fraudulent Transfer and alleging Conspiracy to defraud.
347. Petition by Trustee for Leave to levy Assessment for unpaid Stock Subscriptions.
348. Order directing such Assessment.
349. Complaint to recover unpaid Stock Subscriptions.

#### FORM No. 340.

##### COMPLAINT BY TRUSTEE UPON PROMISSORY NOTE.

..... Court,  
County of .....

....., as Trustee in Bankruptcy of....., Plaintiff, against ..... Defendant.	}
---	---

The plaintiff, by ....., his attorney, complaining of the defendant, respectfully shows and alleges:

1. That the plaintiff is a resident of the City of.....
2. That on or about the ..... day of ....., 19.., a voluntary petition in bankruptcy was filed in the United States District Court for the ..... District of ....., by ....., and on said day the said ..... was duly adjudicated a bankrupt, and that on or about the ..... day of ....., 19.., at a meeting of creditors duly called and held plaintiff was duly appointed trustee in bankruptcy of the said ....., duly qualified and filed his bond in the penalty required, and is still acting as such trustee.

3. Upon information and belief that heretofore on the ..... day of.....  
 ....., 19.., at the City of ....., the defendant made and  
 delivered to the said ....., his certain promissory note in  
 writing, of which the following is a copy: [Here set forth note.]

4. That on the ..... day of ....., 19.., the date of adjudication  
 herein, said promissory note was the property of said bankrupt and that all of  
 the rights of the said ..... in and to said note are now vested  
 in plaintiff, and that plaintiff is the owner and holder of said note.

5. That said note was duly presented at maturity thereof to the defendant  
 and payment duly demanded, but that same was not paid nor any part thereof.

Wherefore, plaintiff demands judgment against the defendant for the sum  
 of \$ ....., with interest thereon from .....,  
 together with the costs and disbursements of this action.

.....  
*Plaintiff's Attorney.*  
 Office and Post Office Address,  
 ..... Street,  
 City of.....

[Verification.]

#### NOTES.

##### **Suits by trustee. General Principles.**

###### **Jurisdiction.**

District Court has no jurisdiction except by consent of proposed defendant of a  
 suit to recover money due estate of bankrupt and which belonged to the bankrupt prior  
 to adjudication.

Harris, Trustee, etc. v. 1st Nat. Bank, etc. (U. S. Sup.), 23 Am. B. R. 632; 216  
 U. S. 382; 54 L. Ed. 528.

###### **Waiver.**

Conferred by consent or general appearance.

McEldowney v. Card, 27 Am. B. R. 937; 193 Fed. 475.

Detroit Trust Co. v. Pontiac Savings Bank (C. C. A. 6th Cir.), 27 Am. B. R. 821;  
 196 Fed. 29; 115 C. C. A. 663.

Sheppard v. Lincoln (D. C. N. Y.), 25 Am. B. R. 804; 184 Fed. 182.

Trustee no right to sue upon agreement between State receiver of bankrupt cor-  
 poration and one of its creditors.

Love v. Export Storage Co. (C. C. A. 6th Cir.), 16 Am. B. R. 172; 143 Fed. 1; 74  
 C. C. A. 155.

May bring plenary action to recover property unlawfully surrendered by tempo-  
 rary receiver.

Whitney, Trustee v. Wenman (U. S. Sup.), 14 Am. B. R. 45; 198 U. S. 539; 49  
 L. Ed. 1157.

May sue in conversion.

Burns v. O'Gorman Co., 17 Am. B. R. 815; 150 Fed. 226.

Action to compel specific performance.

Henrie v. Henderson (C. C. A. 4th Cir.), 16 Am. B. R. 617; 145 Fed. 316; 76 C. C.  
 A. 196; rev'g s. c. 15 Am. B. R. 760; 142 Fed. 568.

Suit to set aside sale of its own stock to a corporation which is insolvent; right of trustee upheld.

Sherrill v. Hutson (Ala. Sup. Ct.), 32 Am. B. R. 532.

May sue for recovery of dividends unlawfully paid out of capital.

Cottrell v. Albany Card & Paper Mfg Co., 142 App. Div. (N. Y.) 148; 126 N. Y. Supp. 1070.

Action to reach surplus income of trust fund.

Brown v. Barker et al. (N. Y. App. Div.), 8 Am. B. R. 450; 68 App. Div. (N. Y.) 594.

Butler v. Baudouine, 177 N. Y. 530; aff'g 16 Am. B. R. 238; 84 App. Div. (N. Y.) 215.

In re Morris (C. C. A. 2nd Cir.), 30 Am. B. R. 319; 204 Fed. 770; 123 C. C. A. 220.

Ditmar v. Gould, 60 App. Div. (N. Y.) 94; 69 N. Y. Supp. 708.

For waste, right of action passes to trustee.

Bynum v. Scott, 33 Am. B. R. 436; 217 Fed. 122.

Money paid to trustee under mistake is an action equitable in nature. Sufficiency of allegations.

Carpenter v. Southworth (C. C. A. 2nd Cir.), 21 Am. B. R. 390; 165 Fed. 428; 91 C. C. A. 378.

No jurisdiction under 23-b of a suit to recover property forcibly seized by a creditor against the will and without the collusion of the bankrupt.

Waite v. Gottstein et al., 35 Am. B. R. 353; 224 Fed. 281.

Nor for damages for conspiracy.

Lynch v. Bronson, 24 Am. B. R. 513; 177 Fed. 605.

Error in caption of summons and complaint in failing to show representative capacity not fatal.

Newland v. Zodikow, 11 Am. B. R. 770.

Equitable jurisdiction.

When plaintiff held to have adequate remedy at law.

Sessler v. Nemcof (D. C. Pa.), 25 Am. B. R. 618; 183 Fed. 656.

Action by trustee to have contract declared void for illegality denied.

Ernst v. The Terminal Clearing House Ass'n (N. Y. Sup. Ct.), 86 Misc. (N. Y.) 295.

Not necessary to obtain an order of the court authorizing trustee to bring a suit in either State or Federal court.

Edwards v. Schillinger, 148 Ill. App. 227.

Traders Ins. Co. v. Mann, 11 Am. B. R. 269; 118 Ga. 381.

Callahan v. Israel, 186 Mass. 383.

Held, however, in Western District of New York to be better practice.

In re Meadows, Williams & Co., 25 Am. B. R. 100; 181 Fed. 911.

(Ed. Note.) Under Sec. 23 of the Act, jurisdiction depends on the citizenship of the bankrupt, and not of the trustee in bankruptcy, save in actions therein specified.

Trustee suing on appeal bond should aver that he is the beneficial owner of the bond.

Dreher Co. v. National Surety Co. (Ala. Sup. Ct.), 27 Am. B. R. 486.

Effect on trustee's right to sue when bankrupt foreign corporation has failed to comply with statutory requirements of State as to doing business.

Thomas v. Birmingham Railway Light and Power Co., 28 Am. B. R. 152; 195 Fed. 340.

#### Cross bills.

When not allowed.

Lovell v. Latham & Co., 26 Am. B. R. 599; 186 Fed. 602.

Right of bankrupt to prosecute action after appointment of trustee.

Colgan v. Finck (N. Y. App. Div.), 30 Am. B. R. 535; 159 App. Div. (N. Y.) 57; 144 N. Y. Supp. 408.

Hahlo v. Cole, 15 Am. B. R. 591; 112 App. Div. (N. Y.) 636.

Amendment of decree or order. Power of District Court.

In re Cuthbertson, 29 Am. B. R. 823; 202 Fed. 266.

Bankruptcy cases distinguished.

In re Burr Mfg. and Supply Co. (C. C. A. 2nd Cir.), 32 Am. B. R. 708; 217 Fed. 16; 133 C. C. A. 126.

### FORM No. 341.

#### COMPLAINT AGAINST DEFAULTING PURCHASER FOR DEFICIENCY UPON RESALE.

.....Court,  
County of .....

....., as Trustee	}
in Bankruptcy of.....,	
<i>Plaintiff,</i>	
against	
.....	}
<i>Defendant.</i>	

The plaintiff above named, by ....., his attorney, complaining of the defendant, shows and alleges:

1. That on or about the ..... day of ....., 19.., a petition of certain creditors of the said ..... was filed in the United States District Court for ..... District of ....., praying that he be adjudged a bankrupt; that thereafter on or about the ..... day of ....., 19.., ..... was duly adjudicated a bankrupt, and thereafter at a meeting of creditors, held at the office of the referee in charge of the proceedings, on the ..... day of ....., 19.., the plaintiff was duly appointed the trustee in bankruptcy of the said bankrupt, duly qualified as such and still continues to act as such trustee.

2. That on or about the ..... day of ....., 19.., at ....., the plaintiff, pursuant to the order of the bankruptcy court, sold to the defendant, and the defendant purchased of the plaintiff, at public auction, certain property consisting of .....  
.....  
.....  
for the sum of ..... dollars (\$.....) under his said agreement.

3. That the plaintiff was ready and willing to deliver the said goods and property to the defendant within the said time, and at all times until the....



day of ....., 19.., thereafter; and caused the same to be retained at the place of said auction for the purpose of delivery to the said defendant upon his paying therefor the said balance of ..... dollars (\$.....), of all of which the defendant had notice, and the plaintiff has otherwise duly performed all the conditions of said sale on his part to be performed.

4. That defendant did not pay for, nor remove said goods on or before the said ..... day of ....., 19..; that thereafter and on or about the ..... day of ....., 19.., plaintiff served notice on the defendant that he would make an application on ....., 19.., to ....., Esq., the referee in bankruptcy in charge of the said proceedings, for an order for a re-sale of the said property for the account of the said defendant, and that said defendant be charged with any deficit that might result from said re-sale and any expenses that might be incurred in maintaining and protecting the said property from ....., 19.., to the date of such re-sale, and for the expenses of such a re-sale; that thereafter, and by an order of the said referee, dated ....., 19.., it was ordered that the said property be sold for the account of the said defendant and that due notice of said re-sale be given to the creditors of the said bankrupt and to the said defendant, and that the said defendant be charged with any deficit which might result to the plaintiff on such re-sale and any expenses incurred in maintaining and protecting the said property from ....., 19.., to the date of such re-sale and for such re-sale; that thereafter and on or about the ..... day of ....., 19.., the defendant had due notice of the making of said order; that thereafter and in pursuance to said order, to wit, on or about the ..... day of ....., 19.., at ....., the plaintiff re-sold the said property by public auction for account of the defendant for ..... dollars, (\$.....).

5. That no part of the deficiency of ..... dollars, (\$.....), thus arising has been paid though duly demanded of the defendant.

6. That plaintiff incurred and paid necessary expenses for maintaining and protecting the said property for the period hereinbefore stated, amounting to ..... dollars (\$.....) and plaintiff incurred and paid necessary expenses of such re-sale, amounting to \$.....

7. That by reason of the premises plaintiff has been damaged in the sum of ..... dollars.

Wherefore, plaintiff demands judgment against the defendant in the sum of ..... dollars, with interest thereon from ....., 19.., together with the costs and disbursements of this action.

.....  
*Attorney for Plaintiff,*  
 Office and Post Office Address,  
 ..... Street,  
 City of .....

[Verification.]

## FORM No. 342.

## BILL IN EQUITY TO RECOVER A PREFERENCE.

District Court of the United States,  
 ..... District of .....

..... as Trustee in Bankruptcy of....., Bankrupt,	} In Equity.
<i>Plaintiff,</i>	
against	
..... <i>Defendant.</i>	

To the Honorable Judge of the District Court,  
 for the ..... District of .....:  
 ....., a resident of ....., in the State of .....  
 ..... in the district of ..... and a citizen of the State of ....  
 ....., brings this his bill of complaint against ..... a resident  
 of ..... in the district of ..... and a citizen of the  
 State of ....., and thereupon complains and says:

I. That this is a suit in equity brought by the plaintiff as trustee in bankruptcy of ..... under and by virtue of the provisions of the Bankruptcy Act of 1898 and amendments thereof to recover a preference under Section 60-b of said act.

II. That heretofore and in the District Court of the United States for the ..... District of ....., a petition in involuntary bankruptcy was filed by three creditors against the above named ..... praying that he be adjudged a bankrupt and thereafter on the ..... day of ...., 19.., he was duly adjudicated a bankrupt in such Court.

III. That thereafter at the first meeting of the creditors of such bankrupt duly called and held before the referee in bankruptcy in charge of such proceeding the plaintiff herein was duly appointed trustee in bankruptcy of the estate of such bankrupt duly qualified and is now acting as such trustee.

IV. That within four months prior to the date of the filing of said involuntary petition in bankruptcy against the said ..... and while insolvent and indebted to the defendant and divers other creditors of the same class upon unsecured indebtedness provable in bankruptcy and well knowing such insolvency, the said ..... did, within such four months' period aforesaid, make a transfer of portions of his property to the said defendant by making payments to him as follows, to wit:

[Set forth specifically.]

That said payments aggregate the sum of \$.....

V. Plaintiff avers that the effect of such payments by ..... to the defendant was to enable the said defendant to obtain a greater percentage of his debt than any other creditor of said bankrupt of the same class as the said defendant and that said payments did thus operate as a preference under the provisions of the Bankruptcy Act of 1898 and amendments thereto.

VI. That the said defendant received said payments and each of them knowing or having reasonable cause to believe that he was receiving a preference under the provisions of the bankruptcy act.

VII. That plaintiff has insufficient assets in his hands to pay in full the debts of ..... bankrupt.

VIII. That on the ..... day of ....., the plaintiff duly demanded of the defendant the restoration and return to the estate in bankruptcy of said preferential payments but such repayment has been refused.

In consideration whereof and for as much as the plaintiff is without adequate remedy at law,

Wherefore, plaintiff prays:

1. That the said several payments alleged herein to have been made by the bankrupt to the defendant and aggregating the sum of \$..... be decreed by this Court to be preferential and in violation of the provisions of the Bankruptcy Act of 1898 and amendments thereof and that the same be set aside and declared to be wholly void as against this plaintiff.

2. That the said defendant be ordered to account and to pay to the plaintiff the sum of \$..... the aggregate of said several payments made to him on the dates aforesaid with interest thereon from the date of such payments.

3. That the plaintiff have such other and further relief in the premises as may be just.

4. And may it please this Honorable Court to issue its subpoena directed to the said defendant commanding him on a day certain to appear and answer this bill of complaint and to abide by the orders and decrees of the Court thereon.

.....,  
*Solicitor for Plaintiff.*

[Address.]

[Address.]

[Verification, if desired or if special preliminary relief is prayed.]

[For persons before whom bill may be verified see Equity Rule XXXVI.]

[Ed. Note.] Although there is abundant authority to support Bill in Equity to recover preferential payments, as above, yet it would seem proper where money judgment alone is sought and no instrument to be set aside, to frame the complaint as in an action at law.

FORM No. 343.

**BILL IN EQUITY TO SET ASIDE MORTGAGE UNDER SEC. 67-e WITHIN  
FOUR MONTHS' PERIOD, AND WHERE PROPERTY HAS BEEN SOLD  
FREE AND CLEAR OF LIENS.**

In the District Court of the United States,  
for the ..... District of .....

....., as Trustee in Bankruptcy of the Estate of ..... Bankrupt, Plaintiff, against .....and..... Defendants.	} In Equity.
---	--------------

To the Honorable Judge of the District Court of the United States,  
for the ..... District of .....

And now comes ....., as trustee of the estate in bankruptcy  
of ....., a citizen of the State of ....., and residing  
in the City of ....., and for his cause of complaint against the above  
named defendants, does respectfully show to this Honorable Court and alleges:

I. That at all the times hereinafter mentioned, the .....,  
was a corporation organized under and existing by virtue of the laws of the  
State of ....., and having its principal place of business in the  
City of ....., District aforesaid.

II. That the above named defendants at all the times hereinafter mentioned  
were, and now are, corporations organized under the laws of the State of ....  
....., and engaged in the business of banking, severally having their  
principal places of business in the City of ..... and at .....,  
State of .....

III. This is a suit in equity under the provisions of the Bankruptcy Act of  
1898 and amendments thereof to set aside a fraudulent conveyance under  
Section 67-e of said act.

IV. Plaintiff further shows that heretofore and on or about the .....  
day of ....., 19.., ..... was duly adjudicated  
a bankrupt in accordance with the Acts of Congress relating to bankruptcy in  
the District Court of the United States for the ..... District of  
....., on a petition praying that it be so adjudicated, filed in  
said Court on the ..... day of ....., 19..; and that thereafter  
the said plaintiff at a first meeting of creditors of the said ....., duly  
called and held on the ..... day of ....., 19.., at the office of  
..... Esq., referee in bankruptcy, to whom the matter in



said bankruptcy had been referred, was duly appointed trustee of the estate in bankruptcy of ....., and thereafter and on or about the ..... day of ....., 19.., duly qualified as such trustee by accepting said trust and filing a bond in the sum of ..... (\$.....) dollars, as required by the order of his appointment, which said bond was duly approved by the referee in bankruptcy and that the said plaintiff has since acted as and now is such trustee.

V. That the plaintiff did heretofore acquire title to the property herein-after more particularly described by virtue of his appointment and qualification as such trustee and the filing of a certified copy of the order of his appointment and the certificate of approval of his bond in the office of the clerk of the County of ....., State of ....., on the ..... day of ....., 19.., in which said County the said property is located and which is as follows, to wit:

[Here describe property fully.]

VI. And plaintiff further shows that by virtue of the provisions of the said Acts of Congress relating to bankruptcy and amendments thereto, the plaintiff as trustee of the estate in bankruptcy of the said ....., became vested with all of the property of the said ....., of whatever kind, character, nature and description whatsoever as of the date that the said ..... was adjudged a bankrupt, and also to all rights of action which the said creditors of the said ..... had at the time of the said adjudication, to avoid all transfers by it made and to recover property so transferred, or its value, and to recover property transferred by it in fraud of its creditors and to recover all property or its value transferred by the said ..... within four months prior to the date of the filing of the petition against it, or after the filing of the petition and before adjudication, if the effect of such transfer was to enable such transferee to obtain a greater percentage of his debt than any other creditor of the same class, and that the person or persons so receiving it, or to be benefited thereby, or his or their agent or agents acting therein shall have had reasonable cause to believe that the said transfer was intended to give a preference under said bankruptcy act.

VII. Upon information and belief, that on or about the ..... day of ....., 19.., the said ....., was indebted to the defendant the ....., herein in the sum of ..... (\$.....) dollars, the ....., about ..... (\$.....) dollars, upon promissory notes made or endorsed by the ....., and which had been discounted by the said defendants at the special instance and request of the said .....

VIII. Plaintiff further shows, upon information and belief, that on said ..... day of ....., 19.., and for a long time prior thereto, the said ..... was insolvent and that while so insolvent, the said ..... made, executed and delivered to the said defendant, the ....



....., a mortgage in consideration of the alleged sum of ..... (\$.....) dollars, covering all of the property hereinbefore more particularly mentioned and described, a copy of which said mortgage is hereto annexed, marked "Exhibit A" and made a part hereof, and which was thereafter and on the ..... day of ....., 19..., duly recorded in Liber ..... of mortgages, page ....., in the office of the clerk of the county of ....., State of .....

IX. Upon information and belief that the defendant, the ..... claimed to have taken and received the said mortgage hereinbefore mentioned and described not only in its own interest but as trustee of and for the said defendant, the ....., and that the said defendant, the ..... has or claims to have, some interest in said mortgage.

X. Upon information and belief, plaintiff does further show and allege that in truth and in fact no present consideration whatsoever was paid by the said defendants to the said ....., for and in consideration of the execution of the said mortgage as aforesaid, but that the said ....., made, executed and delivered the said mortgage to the said defendants, as aforesaid, as alleged security for said prior antecedent and pre-existing indebtedness.

XI. Upon information and belief, that on said ..... day of ....., 19..., the said ..... was insolvent and that the said defendants knew, or had reasonable cause to know and believe that the said ..... was so insolvent and that the said defendants or their agent or agents acting for them knew and had reasonable cause to know and believe that the making, execution and delivery of the said mortgage as aforesaid was made to them by the said ....., in order to enable them to receive a greater percentage of their debts than any other creditors of ....., of the same class.

XII. And the plaintiff does further show that heretofore and prior to the commencement of this action, your orator did duly file with the referee in said bankruptcy proceedings, a petition duly verified by him on the ..... day of ....., 19..., for the entry of an order directing that plaintiff as trustee be authorized and permitted to sell and dispose of all the property, hereinbefore more particularly mentioned and described, at public auction and in the manner prescribed by the Acts of Congress relating to bankruptcy and the general orders of the Supreme Court of the United States, free of and from the lien of the said mortgage, and that thereafter and on the ..... day of ....., 19..., an order was duly made and entered in said bankruptcy proceedings by said referee, wherein and whereby among other things plaintiff was authorized, directed and permitted to sell and dispose of said property at public auction free of and from the lien of the said mortgage.

XIII. And plaintiff does further show that thereafter and in pursuance of the provisions of the said order and by virtue of the power and authority in him vested by the Acts of Congress relating to bankruptcy he did sell at public

auction all of said property hereinbefore more particularly mentioned and described on the ..... day of ....., 19..., at ..... o'clock ..... M. of that day, for the sum of ..... dollars, and that plaintiff under and by virtue of the terms of the order so directing said property to be sold free of and from the lien of the said mortgage, holds and continues to hold the said sum of ..... dollars, subject to the final decree of this court in this action.

XIV. And plaintiff does further show and allege, upon information and belief, that the said defendants did not pay to the said ....., and the said ..... did not receive from the said defendants, any consideration whatsoever for the making, execution and delivery of the said mortgage hereto annexed, marked "Exhibit A" and made a part hereof, and that the said mortgage is fraudulent and void as against the creditors of the said ....., and this plaintiff, and was made, executed and delivered by ....., and received by the said defendants in consummation of a fraudulent scheme between the said defendants and the said ....., to hinder, delay and defraud the creditors of the said ..... and the plaintiff.

XV. And the plaintiff does further show that the assets of this estate are insufficient to pay creditors in full.

In tender consideration whereof, and for as much as the plaintiff is remediless in the premises by the strict rules of the Common Law and cannot have adequate relief save in a Court of Equity where matters of this and a similar nature are properly cognizable and relievable.

Wherefore, plaintiff prays:

1. That the said mortgage made, executed and delivered by the said ....., to the said defendants, dated the ..... day of ....., 19..., and recorded in the office of the register of the County of ....., State of ....., on the ..... day of ....., 19..., in Liber ..... of mortgages, page ....., be annulled, vacated, set aside and declared void.

2. And that the proceeds realized upon the sale of the said property as aforesaid, to wit, the said sum of ..... dollars, be declared the property of the estate of the said ....., and subject to the order of the District Court of the United States sitting in bankruptcy, free of and from the lien of the said mortgage, or any right, title and interest therein by the said defendants.

3. And that plaintiff may have such further and other relief and decree in the premises as to the Court may seem proper and required by the principles of equity and good conscience.

May it please your Honor to grant unto the plaintiff a writ of subpoena of the United States of America, directed to the said defendants the ....., and ....., and to such others as shall in the discretion of your

Honor appear necessary to the hearing and determination of this case, commanding them on a day certain to appear and answer unto this bill of complaint and to abide and perform such order and decree in the premises as to the Court shall seem proper.

.....,  
*Solicitors for complainant,*  
 Office and P. O. Address,  
 .....  
 City of .....

[Verification.]  
 [Annex Exhibits.]

NOTES.

Actions to recover preference or set aside transfer within four months' period.  
 Sec. 60-a b; 67-e, 23-b.

See, Collier on Bankruptcy (10th Ed.), pp. 816-827, 953-961.

See, Moore, "Fraudulent Conveyances," Chap. XXIII.

U. S. Equity Rules XVIII, XXII, XXIV, XXV, XXVI.

**Trustee may sue in Federal or State court.**

Pond v. New York Nat. Exchange Bank (D. C. N. Y.), 10 Am. B. R. 343; 124 Fed. 992.

Wall et al. v. Cox, 5 Am. B. R. 727; 181 U. S. 244; 45 L. Ed. 845.

Parker v. Black, 16 Am. B. R. 202; 143 Fed. 560; aff'd, 18 Am. B. R. 15; 151 Fed. 18; 80 C. C. A. 484.

Off v. Hakes (C. C. A. 7th Cir.), 15 Am. B. R. 696; 142 Fed. 364; 73 C. C. A. 464.  
 Court of Common Pleas (Pa.) has jurisdiction.

Breckons v. Snyder, 15 Am. B. R. 112; 211 Pa. St. 176.

Municipal court of New York, when complaint demands a money judgment.

See, Early v. Electro Bleaching Gas Co. (N. Y. App. Term Sup. Ct.), 90 Misc. (N. Y.) 613.

Cohn v. Small (N. Y. Sup. Ct.), 18 Am. B. R. 817; 120 App. Div. (N. Y.) 211; 105 N. Y. Supp. 287.

Bowman v. Alpha Farms, 18 Am. B. R. 700; 153 Fed. 380.

Time limitation and conflicting State law.

Arnold Grocery Co. v. Shackelford (Ga. Sup. Ct.), 31 Am. B. R. 119.

**Form of suit. In equity or at law.**

Equitable jurisdiction upheld.

Pond v. New York Nat. Exchange Bank (*supra*).

Parker v. Black (*supra*).

Off v. Hakes (*supra*).

Lesser v. Bradford Realty Co. (Sup. Ct. N. Y.), 17 Am. B. R. 524; 116 App. Div. (N. Y.) 212; aff'g 15 Am. B. R. 123.

Houghton v. Stiner, 92 App. Div. (N. Y.) 171.

Wall et al. v. Cox (C. C. A. 4th Cir.), 4 Am. B. R. 659; 101 Fed. 403; 41 C. C. A. 408.

**Action at law for money had and received.**

Where there is a plain, adequate and complete remedy at law the suit should not be on equity side of court.

Warmath v. O'Daniel (C. C. A. 6th Cir.), 20 Am. B. R. 101; 159 Fed. 87; 86 C. C. A. 277.

Stern, Trustee v. Mayer, 16 Am. B. R. 763; 113 App. Div. (N. Y.) 181.

Merritt v. Halliday, 107 App. Div. (N. Y.) 596.

Johnson v. Hanley Hoyer Co. (D. C. R. I.), 26 Am. B. R. 748; 188 Fed. 752.

First State Bank of Milliken v. Spencer (C. C. A. 8th Cir.), 33 Am. B. R. 594; 219 Fed. 503; 135 C. C. A. 253.

Reber v. Ellis Bros., 25 Am. B. R. 567; 185 Fed. 313.

**Who may bring the action.**

Trustee only may sue under this section.

Parker v. Black (*supra*).

But if trustee refuses, then a creditor may be permitted to do so for the benefit of all.

Simple contract creditor may not maintain the suit in aid of the bankruptcy proceeding.

Viquiesney v. Allen (C. C. A. 4th Cir.), 12 Am. B. R. 402; 131 Fed. 21; 65 C. C. A. 259.

The right of a trustee to bring an action to set aside an alleged preferential transfer not assignable.

Belding-Hall Mfg. Co. v. Mercer and Ferdon Lumber Co. (C. C. A. 6th Cir.), 23 Am. B. R. 595; 175 Fed. 335; 99 C. C. A. 123.

Lovell v. Latham & Co., 32 Am. B. R. 191; 211 Fed. 374.

*Contra.* Bryan v. Madden (N. Y. Sup. Ct.), 15 Am. B. R. 388; 109 App. Div. (N. Y.) 876; 96 N. Y. Supp. 465.

**Against whom action brought.**

In re Bailey, 16 Am. B. R. 289; 144 Fed. 214.

See, Benjamin v. Chandler, 15 Am. B. R. 439; 142 Fed. 217.

Suit can be brought not only against the creditor or his agent, but against a transferee not a creditor.

Hackney v. Hargreaves Bros., 13 Am. B. R. 164; 3 Neb. 676; rev'g 10 Am. B. R. 213.

Note paid by debtor to relieve indorser a preference, and may be recovered from the indorser.

Landry v. Andrews, 6 Am. B. R. 281; 22 R. I. 597; 48 Atl. 1036.

Kobusch v. Hand (C. C. A. 8th Cir.), 19 Am. B. R. 379; 156 Fed. 660; 84 C. C. A. 372.

Suit may be maintained against the board of trustees of a township.

Painter v. Napoleon Township, 19 Am. B. R. 412; 156 Fed. 289.

A guarantor, an indorser, an accommodation maker or a surety on the obligation of the bankrupt is a creditor within Sec. 60 of the Act.

Stern v. Paper (C. C. A. 8th Cir.), 28 Am. B. R. 592; 198 Fed. 642; 117 C. C. A. 346; aff'g, s. c. 25 Am. B. R. 451; 183 Fed. 228.

Payment to attorney for services rendered before the adjudication may constitute a preference.

Magee v. Fox (C. C. A. 2d Cir.), 36 Am. B. R. 161.

**Practice and pleading.**

Bill or complaint must allege four statutory elements for recovery under Sec. 60-a, b.

(1) Insolvency at time of payment.

(2) That the payments were made within four months before filing of the petition.

(3) That the effect of the payments was to give the defendant a greater percentage of his debt than other creditors of the same class.

(4) That the defendant had reasonable cause to believe that a preference was intended by such payment.

Wright v. Wm. Skinner Mfg. Co. (C. C. A. 2d Cir.), 20 Am. B. R. 527; 162 Fed. 315; 89 C. C. A. 23.

Benedict v. Deshel (N. Y. Ct. of App.), 11 Am. B. R. 20; 177 N. Y. 1.

Harder v. Clark (City Ct. N. Y.), 23 Am. B. R. 756.



See, *contra*. Rutland Co. National Bank v. Graves (D. C. Vt.), 19 Am. B. R. 446; 156 Fed. 168.

Essential that bankrupt should have transferred some portion of his own property to the creditor.

Mason v. Nat. Bank of Little Falls (C. C. A. 2d Cir.), 22 Am. B. R. 733; 172 Fed. 529; 97 C. C. A. 155; *aff'd*, 225 U. S. 178; 56 L. Ed. 1042.

In re Sayed, 26 Am. B. R. 444; 185 Fed. 962.

Transfer to one not a creditor.

Keystone Warehouse Co. v. Bissell (C. C. A. 2d Cir.), 30 Am. B. R. 213; 203 Fed. 652; 122 C. C. A. 48.

Aiello v. Crampton (C. C. A. 8th Cir.), 29 Am. B. R. 1; 201 Fed. 891; 120 C. C. A. 189.

Painter v. Township of Napoleon (D. C. O.), 26 Am. B. R. 324; 190 Fed. 637.

Page v. Moore (D. C. Pa.), 24 Am. B. R. 745; 179 Fed. 988.

Catchings v. Chatham Nat. Bank (C. C. A. 2d Cir.), 24 Am. B. R. 843; 180 Fed. 103; 103 C. C. A. 601.

Allegations in language of the Act.

Utah Ass'n of Creditmen v. Boyle Furniture Co. (Utah Sup. Ct.), 31 Am. B. R. 488.

If action is at law and for money alleged to belong to bankrupt a demand should be alleged, but in equity no allegation of a previous demand is necessary.

Wright v. Skinner, 14 Am. B. R. 500; 136 Fed. 694.

Grant v. National Bank of Auburn, 28 Am. B. R. 712; 197 Fed. 581.

See, In re Phelps, 3 Am. B. R. 396.

Action to set aside an alleged fraudulent conveyance or to recover a preference not a proceeding in bankruptcy, but ancillary thereto and governed as to pleading and practice by the laws and rules of the court wherein it is instituted.

Westall et al. v. Avery (C. C. A. 4th Cir.), 22 Am. B. R. 673; 171 Fed. 626; 96 C. C. A. 428.

See as to allegations and practice.

Lesser v. Bradford Realty Co., 17 Am. B. R. 524; 116 App. Div. (N. Y.) 212; *aff'g* 15 Am. B. R. 123; Crooks v. People's Nat. Bank of Malone, 3 Am. B. R. 238; 46 App. Div. (N. Y.) 335.

Painter v. Napoleon Township (D. C. O.), 19 Am. B. R. 412; 156 Fed. 289.

Carey v. Donohue (C. C. A. 6th Cir.), 31 Am. B. R. 210; 209 Fed. 328; 126 C. C. A. 254; *rev'd*, U. S. Sup. 36 Am. B. R. 704.

Morris v. Tannenbaum (Ref. N. Y.), 26 Am. B. R. 368.

Complaint should allege insufficient assets to pay debts in full.

Prescott v. Galluccio, 21 Am. B. R. 229; 164 Fed. 618.

[See notes to Form 344.]

Must have been a "transfer."

Rosenbluth v. De Forest and Hotchkiss Co. (Conn. Sup. Ct. of Errors), 27 Am. B. R. 359.

Allegation of "insolvency."

Martin v. Bigelow, 7 Am. B. R. 218; 36 Misc. (N. Y.) 298.

Hewitt v. Boston Straw Board Co. (Mass. Sup. Jud. Ct.), 31 Am. B. R. 652.

Proof of insolvency — what considered as assets.

Utah Ass'n of Creditmen v. Boyle Furniture Co., 26 Am. B. R. 867.

Allegation that a preference was fraudulent without setting forth the facts showing the fraud insufficient.

In re Leech (C. C. A. 6th Cir.), 22 Am. B. R. 599; 171 Fed. 622; 96 C. C. A. 424.

Gering v. Leyda (C. C. A. 8th Cir.), 26 Am. B. R. 137; 186 Fed. 110; 108 C. C. A. 222.

Debtor's motive or intent immaterial since amendment of 1910.



*In re Hennan*, 207 Fed. 594.

As distinguished from intent.

*In re McGee*, 5 Am. B. R. 262; 105 Fed. 895.

*Rogers, Trustee v. American Halibut Co.* (Mass. Sup. Ct.), 31 Am. B. R. 576.

*Heyman v. Third Nat. Bank of Jersey City* (D. C. N. J.), 32 Am. B. R. 716; 216 Fed. 685.

*Schmidt v. Bank of Commerce* (Sup. Ct. N. M.), 25 Am. B. R. 904.

*Wilson v. Mitchell-Woodbury Co.* (Mass. Sup. Ct.), 31 Am. B. R. 837.

Complaint may be dismissed for variance between pleading and proof

*Stern v. Mayer* (N. Y. Sup. Ct.), 16 Am. B. R. 763; 113 App. Div. (N. Y.) 181; 98 N. Y. Supp. 1028.

Right to elect damages.

*National City Bank of New York v. Hotchkiss* (U. S. Sup.), 31 Am. B. R. 291; 231 U. S. 50; 53 L. Ed. 115; aff'g 29 Am. B. R. 289; 201 Fed. 664; 120 C. C. A. 92.

Restoration of stolen funds, not a recoverable preference.

*McNaboe v. Columbian Mfg. Co.* (C. C. A. 2d Cir.), 18 Am. B. R. 684; 153 Fed. 967; 83 C. C. A. 81.

Transfer of revocable interest held not a preference.

*In re Martin* (C. C. A. 3d Cir.), 29 Am. B. R. 623; 200 Fed. 940; 119 C. C. A. 324.

A court of equity in a suit by a trustee to recover a preference will not entertain a cross bill for the recovery by defendant of the amount of the dividend to which he claims to be entitled from the bankrupt's estate, but will require him to prove his claim in the Bankruptcy Court.

*Ommen v. Talcott* (D. C. N. Y.), 23 Am. B. R. 572; 175 Fed. 259.

In ancillary suit by trustee to recover a preference other claimants cannot intervene.

*Knauth, Nachod and Kuhne v. Latham and Co.*, 33 Am. B. R. 631; 219 Fed. 721; 135 C. C. A. 419.

#### **Burden of proof.**

Upon trustee.

*Deland v. Miller and Cheney Bank*, 11 Am. B. R. 744; 119 Iowa 368.

*Cetts v. Janesville Grocery Co.* (D. C. Wis.), 21 Am. B. R. 5; 163 Fed. 417.

*Wright v. Sampter* (D. C. N. Y.), 18 Am. B. R. 355, 358; 152 Fed. 196.

*Calhoun Co. Bank v. Cain* (C. C. A. 4th Cir.), 18 Am. B. R. 509; 152 Fed. 983; 82 C. C. A. 114.

*Keith, Trustee v. Gettysburg Nat. Bank*, 10 Am. B. R. 762; 23 Pa. Super. Ct. 14.

*Allen, as Trustee etc. v. Gray* (N. Y. Sup.), 21 Am. B. R. 828.

The bankrupt's petition for discharge, schedules and testimony at first meeting of creditors are inadmissible against the defendant to prove the insolvency of the bankrupt at the time of the transfer.

*Taylor, Trustee etc. v. Nichols* (N. Y. Sup. Ct.), 23 Am. B. R. 310; 134 App. Div. (N. Y.) 783; 119 N. Y. Supp. 919.

*Batchelder v. Home Nat. Bank* (Mass. Sup. Jud. Ct.), 32 Am. B. R. 555.

Preference by partnership — burden on plaintiff. Insolvency of individuals.

*J. W. Crancer & Co. v. Wade* (Okla. Sup. Ct.), 25 Am. B. R. 880.

*Tumlin v. Bryan* (C. C. A. 5th Cir.), 21 Am. B. R. 319; 165 Fed. 166; 91 C. C. A. 200.

*Rodolf v. First Nat. Bank* (Okla. Sup. Ct.), 28 Am. B. R. 897.

*Vaccaro v. Security Bank* (C. C. A. 6th Cir.), 4 Am. B. R. 474; 103 Fed. 436; 43 C. C. A. 279.

Power of District Court in such equity suits. *Allen v. McMannes*, 19 Am. B. R. 276; 156 Fed. 615.

Direction of verdict.

Shale v. Farmers' Bank of Morrill (Kas. Sp. Ct.), 25 Am. B. R. 888.

An adjudication of a bankrupt upon the ground of preference, not conclusive upon creditor that his security is a voidable preference.

Hussey v. Dry Goods Co. (C. C. A. 8th Cir.), 17 Am. B. R. 511; 148 Fed. 598; 78 C. C. A. 370.

**"Reasonable cause to believe."**

What constitutes.

Each case turns on its own facts.

Information sufficient to put upon inquiry. *Bardes v. First National Bank of Hawarden* (Sup. Ct. Ia.), 12 Am. B. R. 771; 122 Ia. 443.

*In re Coffey*, 19 Am. B. R. 148, 165.

A state of facts as would lead a prudent business man to the conclusion that the debtor is unable to meet his obligations, as they mature, in the ordinary course of business.

*Benedict v. Deshel*, 11 Am. B. R. 20; 177 N. Y. 1.

*Coder v. McPherson* (C. C. A. 8th Cir.), 18 Am. B. R. 523; 152 Fed. 951; 82 C. C. A. 99.

*In re Eggert* (C. C. A. 7th Cir.), 4 Am. B. R. 449; 102 Fed. 735; 43 C. C. A. 1; *Wright v. Sampter* (D. C. N. Y.), 18 Am. B. R. 355; 152 Fed. 196.

*Wright v. Wm. Skinner Mfg. Co.* (C. C. A. 2d Cir.), 20 Am. B. R. 527; 162 Fed. 315; 89 C. C. A. 23.

*Huttig Mfg. Co. v. Edwards* (C. C. A. 8th Cir.), 20 Am. B. R. 349; 160 Fed. 619; 87 C. C. A. 521.

*In re Mills Co.*, 20 Am. B. R. 501; 162 Fed. 42.

*Stevens v. Oscar Holway Co.*, 19 Am. B. R. 399; 156 Fed. 90.

*In re Virginia Hardware Mfg. Co.*, 15 Am. B. R. 135; 139 Fed. 209.

As construed by Supreme Court.

*Continental and Commercial Trust and Savings Bank v. Chicago Title and Trust Co.*, 30 Am. B. R. 624; 229 U. S. 435; 57 L. Ed. 1268.

*Hamilton Nat. Bank of Chicago v. Balcomb* (C. C. A. 7th Cir.), 24 Am. B. R. 338; 177 Fed. 155; 100 C. C. A. 575.

*Kimmerle v. Farr* (C. C. A. 6th Cir.), 26 Am. B. R. 818; 189 Fed. 295; 111 C. C. A. 27.

*In re Gaylord* (D. C. N. Y.), 35 Am. B. R. 544; 225 Fed. 234.

*In re Andrews*, 16 Am. B. R. 387; 144 Fed. 922; 75 C. C. A. 562; aff'g 14 Am. B. R. 247; 135 Fed. 599.

Actual knowledge not required.

*Ridge Avenue Bank v. Sundheim* (C. C. A. 3d Cir.), 16 Am. B. R. 863; 145 Fed. 798; 76 C. C. A. 362; aff'g, s. c. 15 Am. B. R. 132; 138 Fed. 951.

*Coder v. Arts* (C. C. A. 8th Cir.), 18 Am. B. R. 513; 152 Fed. 943; 82 C. C. A. 91; modifying *In re Armstrong*, 16 Am. B. R. 583; 145 Fed. 202. *Getts v. Janesville Grocery Co.*, 21 Am. B. R. 5; 163 Fed. 417.

*In re Pfaffinger*, 18 Am. B. R. 807; 154 Fed. 528. *Pratt v. Columbia Bank* (D. C. N. Y.), 18 Am. B. R. 406, 415; 157 Fed. 137.

*Suffel v. McCartney Nat. Bank*, 16 Am. B. R. 259; 106 N. W. 837.

*In re Hines*, 16 Am. B. R. 495; 144 Fed. 543.

*Stevenson v. Milliken Tomlinson Co.*, 13 Am. B. R. 201; 99 Me. 320.

Knowledge of agent may be imputed to principal.

*Off v. Hakes* (C. C. A. 7th Cir.), 15 Am. B. R. 696; 142 Fed. 364; 73 C. C. A. 464. *Babbitt v. Kelly*, 9 Am. B. R. 335; 95 Mo. App. 529; 70 S. W. 384.

*Collett v. Bronx Nat. Bank* (C. C. A. 2d Cir.), 30 Am. B. R. 598; 205 Fed. 370; 123 C. C. A. 392; aff'g, s. c. 29 Am. B. R. 454; 200 Fed. 111.

In re Dorr (C. C. A. 9th Cir.), 28 Am. B. R. 505, 509; 196 Fed. 292; 116 C. C. A. 112.

In re Nassau, 15 Am. B. R. 793; 140 Fed. 912. But see, Crooks v. People's Bank, 3 Am. B. R. 238; 46 App. Div. (N. Y.) 335; 61 N. Y. Supp. 604; s. c. 5 Am. B. R. 754; 72 App. Div. (N. Y.) 331; aff'd, 177 N. Y. 68.

McNaboe v. Columbian Mfg. Co. (C. C. A. 2d Cir.), 18 Am. B. R. 684; 153 Fed. 967; 83 C. C. A. 81.

Failure to inquire.

R. H. Herron Co. v. Moore (C. C. A. 9th Cir.), 31 Am. B. R. 221; 208 Fed. 134; 125 C. C. A. 356.

Collett v. Bronx Nat. Bank (D. C. N. Y.), 29 Am. B. R. 454; 200 Fed. 111.

In re C. J. McDonald & Sons (D. C. S. Car.), 24 Am. B. R. 446; 178 Fed. 487.

Ogden v. Reddish, 29 Am. B. R. 51; 200 Fed. 977.

Presumption of knowledge.

Treasurer of bankrupt corporation.

In re W. A. Silvernail Co., 33 Am. B. R. 59; 218 Fed. 979.

Mortgage by firm to partner.

In re W. J. Floyd & Co., 19 Am. B. R. 438; 156 Fed. 206.

In re Richards, Inc., 28 Am. B. R. 636.

Reasonable cause to believe a question of fact for jury.

Thomas v. Adelman (D. C. N. Y.), 14 Am. B. R. 510; 136 Fed. 973; also question of solvency.

Upson v. Mount Morris Bank, 14 Am. B. R. 6; 103 App. Div. (N. Y.) 367.

Wetstein v. Franciscus (C. C. A. 2d Cir.), 13 Am. B. R. 326; 133 Fed. 900; 67 C. C. A. 62.

Ridge Avenue Bank v. Sundheim (C. C. A. 3d Cir.) (*supra*).

Turner v. Fisher (*infra*).

On part of bank.

Rosenthal v. Bronx Nat. Bank et al. (D. C. N. Y.), 35 Am. B. R. 273; 222 Fed. 83.

When bank's action in applying customer's deposit construed as a preference.

In re National Lumber Co. (C. C. A. 3d Cir.), 32 Am. B. R. 389; 212 Fed. 928; 129 C. C. A. 448.

Protest of bankrupt's checks as notice to bank.

Connors v. Bucksport National Bank, 214 Fed. 847.

In re Frazin and Oppenheim (C. C. A. 2d Cir.), 29 Am. B. R. 214; 201 Fed. 86; 119 C. C. A. 424.

Deposit with bank made after it had knowledge of the depositor's insolvency or at least was put on inquiry, constitutes a voidable preference.

Ernst v. Mechanics and Metals Nat. Bank (C. C. A. 2d Cir.), 29 Am. B. R. 289; 201 Fed. 664; 120 C. C. A. 92; aff'd, 31 Am. B. R. 302; 231 U. S. 60; 58 L. Ed. 121.

Tilt v. Citizen's Trust Co. (D. C. N. J.), 27 Am. B. R. 320; 191 Fed. 441; aff'd, 200 Fed. 410; 118 C. C. A. 562.

**Right to set off deposit.**

Studley v. Boyleston Nat. Bank of Boston (In re Collvers Tours Co.) (C. C. A. 1st Cir.), 29 Am. B. R. 649; 200 Fed. 249; 118 C. C. A. 435; aff'd, s. c. (U. S. Sup.), 30 Am. B. R. 161; 33 S. Ct. 806; 229 U. S. 523; 57 L. Ed. 1313.

Walsh v. First Nat. Bank of Maysville, 29 Am. B. R. 118; 20 Fed. 522; 120 C. C. A. 30.

Unmatured notes.

Germania Savings Bank and Trust Co. v. Loeb, 26 Am. B. R. 238; 188 Fed. 285; 110 C. C. A. 263.

**Preference to indorser.**

Indorser a creditor.

Brown v. Streicher (D. C. R. I.), 24 Am. B. R. 267; 177 Fed. 473.

Reber v. Louis Shulman & Bro. (D. C. Pa.), 24 Am. B. R. 782; 179 Fed. 574; aff'd, 28 Am. B. R. 475; 183 Fed. 564; 106 C. C. A. 110.

Kobusch v. Hand (C. C. A. 8th Cir.), 19 Am. B. R. 379; 156 Fed. 660; 84 C. C. A. 372.

See, *Catchings v. Chatham Nat. Bank (supra)*.

Factors' liens.

Ommen v. Talcott (C. C. A. 2d Cir.), 26 Am. B. R. 689; 188 Fed. 401; 112 C. C. A. 239; rev'g, in part 23 Am. B. R. 572; 175 Fed. 259.

Transfers to one not a creditor.

In re Kayser (C. C. A. 3d Cir.), 24 Am. B. R. 174; 177 Fed. 383; 100 C. C. A. 615.

Defendant "benefited thereby" under Sec. 60.

Huntington v. Baskerville (C. C. A. 8th Cir.), 27 Am. B. R. 219; 192 Fed. 813; 113 C. C. A. 137.

The estate of the insolvent debtor must be diminished by the transfer.

National Bank of Newport v. National Herkimer Bank of Little Falls (U. S. Sup.), 28 Am. B. R. 218; 225 U. S. 178; 56 L. Ed. 1042; aff'g Mason v. Same, 22 Am. B. R. 733; 172 Fed. 529; and rev'g 21 Am. B. R. 98; 163 Fed. 920.

**Preference by indirection.**

In pursuance of former contract.

Lathrop Bank v. Holland (C. C. A. 8th Cir.), 30 Am. B. R. 62; 205 Fed. 143; 123 C. C. A. 375.

Form of transaction not controlling.

Morris v. Tannenbaum et al., 26 Am. B. R. 368.

In re C. J. McDonald & Sons (D. C. So. Car.), 24 Am. B. R. 446; 178 Fed. 487.

Wickwire v. Webster City Savings Bank (Ia. Sup. Ct.), 27 Am. B. R. 157.

In re Harrison Bros., 28 Am. B. R. 684.

Substitution of securities within four months' period.

In re Reese-Hammond Fire Brick Co. (C. C. A. 3d Cir.), 25 Am. B. R. 323; 181 Fed. 641; 104 C. C. A. 371.

Securities held in escrow. Delivery to pledgee within four months' period under exercise of pre-existing right, not a preference.

Sexton v. Kessler & Co. (Ltd.) (U. S. Sup.), 28 Am. B. R. 85; 225 U. S. 90; 56 L. Ed. 995; aff'g 21 Am. B. R. 807; 172 Fed. 535; 97 C. C. A. 161.

National Bank of Newport v. Nat. Herkimer County Bank (*supra*).

Rogers v. Fidelity Savings and Loan Co., 23 Am. B. R. 1; 172 Fed. 735.

Preference by confession of judgment.

Grant v. National Bank of Auburn, 28 Am. B. R. 712; 197 Fed. 581.

Sufficiency of answer to reasonable cause.

Plummer v. Myers, 14 Am. B. R. 805; 137 Fed. 660. American Lumber, etc., Co. v. Taylor (C. C. A. 3d Cir.), 14 Am. B. R. 231; 137 Fed. 321; 70 C. C. A. 21.

Turner v. Fisher, 13 Am. B. R. 243; 133 Fed. 594.

When action not sustained by the evidence.

Pratt, as Trustee, etc. v. Christie (N. Y. App. Div.), 12 Am. B. R. 1; 95 App. Div. (N. Y.) 282.

Payment through attorney who has not been reimbursed.

In re Kerlin (C. C. A. 6th Cir.), 31 Am. B. R. 12; 209 Fed. 42; 126 C. C. A. 184; rev'g, s. c. 30 Am. B. R. 816.

**Amount of recovery.**

Allen v. McMannes, 19 Am. B. R. 276; 156 Fed. 615.

Value of property, not amount realized by transferee.



In re Ansley Bros., 18 Am. B. R. 457; 153 Fed. 983.

McElvain v. Hardesty (C. C. A. 8th Cir.), 22 Am. B. R. 320; 169 Fed. 31; 94 C. C. A. 399.

Only so much recoverable as is necessary for the payment of claims and the costs and expenses of administering the estate.

Rogers v. Page (C. C. A. 6th Cir.), 15 Am. B. R. 502; 140 Fed. 596; 72 C. C. A. 164.

Exempt property not so recoverable.

Vitzhum v. Large, 20 Am. B. R. 666; 162 Fed. 685.

From what date interest allowed in decree.

Wilson v. Mitchell-Woodbury Co. (Mass. Sup. Jud. Ct.), 31 Am. B. R. 837.

Utah Ass'n of Credit Men v. Boyle Furniture Co. (Utah Sup. Ct.), 31 Am. B. R. 488.

### Computation of time.

Mortgage within four months' period; Secs. 60 and 3-b construed.

In re Boyd (C. C. A. 2d Cir.), 32 Am. B. R. 548; 213 Fed. 774; 130 C. C. A. 288

Brooks v. Bank of Beaver City, 25 Am. B. R. 890.

When recording or registering of transfer not required within Sec. 60-b.

Telford v. Henrickson (Minn. Sup. Ct.), 31 Am. B. R. 866.

In re Beckhaus (C. C. A. 7th Cir.), 24 Am. B. R. 380; 177 Fed. 141; 100 C. C. A. 561.

Bankruptcy Court has jurisdiction of action by trustee without consent of defendants to recover preferential payments alleged to have been made in violation of Sec. 66. New York State Stock Corporation Law.

Grandison v. Robertson (D. C. N. Y.), 34 Am. B. R. 609; 220 Fed. 985.

Cardozo, Jr. v. Brooklyn Trust Co. (C. C. A. 2d Cir.), 36 Am. B. R. 351.

In New York, when transfer is made by an insolvent corporation, plaintiff under Section 66 of New York Stock Corporation Law of 1909, need not prove reasonable cause to believe on part of transferee.

Price v. Derbyshire Coffee Co. (N. Y. Sup. Ct.), New York Law Journal, April 9, 1910, Trial Term, Part XVII, page 154.

Irish v. Citizens' Trust Co. (D. C. N. Y.), 21 Am. B. R. 39; 163 Fed. 880.

## FORM No. 344.

### COMPLAINT IN STATE COURT TO DECLARE SECRET TRUST.

..... Court of .....,

County of .....

....., as Trustee	}
in Bankruptcy of.....	
<i>Plaintiff,</i>	
against	
.....	
and	}
.....	
<i>Defendants.</i>	

The plaintiff for his complaint herein by ....., his attorney, respectfully shows to this honorable Court and alleges:



1. That heretofore and in the District Court of the United States for the ..... district of ....., a petition in bankruptcy was duly filed by the above named ....., in which district, the said ..... for more than six months prior to the filing of said petition resided, to be adjudged a voluntary bankrupt and proceedings were thereupon duly had on such petition, that on the ..... day of ....., 19..., an order of adjudication was duly made and entered adjudicating the above named defendant ....., a bankrupt within the purview of the Acts of Congress, relating to bankruptcy.

2. That thereafter such proceedings were duly had in the said District Court of the United States for the ..... district of ..... that at a meeting of creditors of the said bankrupt, this plaintiff was duly appointed the trustee in bankruptcy of the estate, assets and effects of the said .....

3. That thereafter this plaintiff duly gave and filed a bond as required by law and in other respects duly qualified as such trustee in bankruptcy of the said ....., and is still acting as such trustee.

4. Upon information and belief that the above named defendant, ..... is the owner of record of certain real estate, described as follows:

[Here describe property.]

5. Upon information and belief that the said real estate was purchased with the money of the said defendant, ....., and pursuant to an understanding and agreement then had between the said defendants, ..... and his wife, ....., that the said property was to be purchased in the name of the defendant ..... and to be held by her in trust for the use and benefit of the defendant, .....

6. Upon information and belief that prior to and on ....., 19..., when the said property was purchased in the name of the defendant, ....., the said ..... was insolvent and unable to pay his debts and obligations in full.

7. Upon information and belief that the said property hereinbefore described was purchased in the name of the said defendant, ....., solely with the intent and purpose of cheating and defrauding the creditors of the said .....

8. Upon information and belief that the said defendant ....., is in reality and as a matter of fact, the owner of the said property, but that the said defendant, ....., is holding the same in trust for him under the secret understanding and agreement hereinbefore set forth, with the intent and purpose of cheating and defrauding the creditors of the said ....., and that the same is part of the bankrupt's estate which he has not surrendered to the plaintiff as his trustee as required by law.

9. That the assets of this estate in hands of plaintiff are insufficient to pay the debts of said bankrupt in full.

Wherefore, plaintiff demands judgment as follows:

I. That the said defendant, ....., be decreed and adjudged to be the true and lawful owner of the property mentioned in said complaint, and that the said defendant, ....., be decreed to hold the said property in trust for the said defendant, .....

II. That the said defendant ....., be directed to execute a deed of the said premises herein mentioned to the plaintiff as trustee in bankruptcy of the defendant, .....

III. That the said property herein mentioned be directed to be sold according to law, for the benefit of the creditors of the said ....., the bankrupt herein.

IV. That this plaintiff have such other and further relief in the premises as to this court may seem just and equitable, besides the costs and disbursements of this action.

.....  
*Attorney for plaintiff,*  
 Office and P. O. Address, ..... St.,  
*City of* .....

[Verification.]

#### NOTES.

**Action to fasten secret trust.**

Ludvig v. American Woolen Co. (D. C. N. Y.), 19 Am. B. R. 795; 159 Fed. 796. Jurisdiction in Bankruptcy Court to entertain such action upheld in.

Milkman v. Arthe (C. C. A. 2d Cir.), 34 Am. B. R. 536; 223 Fed. 507; 139 C. C.

A. 55; rev'g, s. c. 33 Am. B. R. 418; 221 Fed. 134.

See also, 32 Am. B. R. 519.

Newcomb v. Biwer, 29 Am. B. R. 15; 199 Fed. 529.

Pleading when sufficient.

McKey v. Cochran (Ill. Sup. Ct.), 33 Am. B. R. 78.

[Observe requirements of Equity Rules, when action is brought in Federal court.]

FORM No. 345.

COMPLAINT IN STATE COURT ACTION TO SET ASIDE UNDER SEC.  
70-e BILL OF SALE MADE BEYOND FOUR MONTHS' PERIOD.

..... Court of .....,  
..... County.

.....as Trustee in Bankruptcy of..... <i>Plaintiff,</i> against ..... <i>Defendant.</i>	}
--	---

The plaintiff appearing by ....., his attorney, for a complaint herein, alleges upon information and belief:

I. That at all times hereinafter mentioned the defendant, ....., was and still is a domestic corporation, organized and existing under and pursuant to the laws of the State of .....

II. That heretofore, and on or about ....., 19.., a petition in bankruptcy was filed against ....., in the district court of the United States for the ..... district of ....., and such proceedings were had thereafter that said ..... was on or about the ..... day of ....., 19.., duly adjudicated a bankrupt.

III. That thereafter and on the ..... day of ....., 19.., ....., the plaintiff herein, was duly appointed trustee of the estate of said ....., bankrupt; and that thereafter plaintiff duly qualified and entered upon the discharge of his duties as such trustee and has been at all times since and is now such trustee; that upon the appointment and qualification of the plaintiff as such trustee, he became, was and is vested for the benefit of the creditors of the said bankrupt, and in accordance with the provisions of the laws of the United States in such case made, with all and singular the real and personal estate, assets and causes of action which were owned by or to which the said ....., or his creditors were in anywise entitled on the day when he was adjudicated bankrupt, as aforesaid, as well as to all property theretofore transferred by him in fraud of his creditors.

IV. That at the time of the execution and delivery to the defendant ....., of the alleged bills of sale and agreement hereinafter mentioned, and at the time of the filing of the alleged bill of sale of ....., 19.., hereinafter referred to, and at the time defendant took possession of the

property mentioned in paragraph . . of this complaint, the said ..... owed debts to various creditors now represented by the plaintiff, as trustee aforesaid, amounting to \$. . . . . or thereabouts; that some of said debts had been reduced to judgment prior to the execution and delivery of the said alleged bills of sale and said agreement; that other of said debts were reduced to judgment prior to the adjudication of said . . . . ., in bankruptcy; that all of said debts remain wholly unpaid and have been proved and filed in the bankruptcy proceedings of said . . . . ., and allowed by the referee in charge thereof; that plaintiff has no money or other property in his possession to pay said debts or any part thereof, and the sole asset of the estate, is the property which the plaintiff seeks to recover in this action.

V. That on or about the ..... day of . . . . ., 19.., said . . . . ., bankrupt, was the owner and in possession of certain property as follows, to wit: ..... situated at ..... street, in the City of ..... and State of . . . . ., all of which were of an estimated value of \$. . . . ., or thereabouts.

VI. That thereafter and on or about the ..... day of . . . . ., 19.., the said . . . . ., made an alleged bill of sale of the said goods and chattels above mentioned, to the defendant, . . . . ., which alleged bill of sale was intended to and did operate as a mortgage on the goods and chattels covered thereby, a copy of said alleged bill of sale is hereto annexed marked "Exhibit A," and made a part of this complaint.

VII. That on or about the said ..... day of . . . . ., 19.., the said . . . . ., bankrupt, made an agreement with the said . . . . ., defendant relative to the making and delivery to the said . . . . . of certain promissory notes, a copy of which agreement is hereto annexed marked "Exhibit B," and made a part of this complaint.

VIII. That on or about the ..... day of . . . . ., 19.., the said . . . . ., bankrupt, made an alleged bill of sale to the defendant, a copy of which is hereto annexed marked "Exhibit C," and made a part of this complaint, purporting to be confirmatory of the alleged bill of sale and agreement hereinbefore mentioned in paragraphs VI and VII respectively of this complaint.

IX. That there was no consideration given or received for the said alleged bill of sale and said agreement of . . . . . 19..; that the only consideration for the alleged confirmatory bill of sale of . . . . ., 19.., was an alleged antecedent indebtedness due by said . . . . . to defendant; that there was no delivery of the said goods and chattels to the defendant under said alleged bills of sale and said agreement until on or about . . . . . 19..; that the said . . . . ., bankrupt, remained in full and continuous custody, control and possession of said goods and chattels up to or about . . . . ., 19..; that said alleged bill



of sale of . . . . ., 19.., and the said agreement of . . . . ., 19.., were not filed pursuant to the laws of the State of . . . . ., in office of . . . . . of the County of . . . . . until after . . . . ., 19.., and that possession of said goods and chattels was not taken by the defendant until on or about . . . . ., 19...

X. That at the time of the execution and delivery to the defendant . . . . . of said alleged bill of sale and agreement and at the time of the filing of the alleged bill of sale on . . . . ., 19...., and at the time the defendant . . . . . took possession of the property mentioned in paragraph . . . . . of this complaint, the said . . . . . was insolvent and owed debts largely in excess of the value of his assets, and that such alleged bill of sale and agreement aforesaid, was made, executed and delivered to . . . . ., defendant, for the purpose and with intent on the part of the said . . . . . of hindering, delaying and defrauding his said creditors, and of placing his property beyond the reach of his said creditors, and each of them, and the defendant . . . . . so received said alleged bill of sale, and knowingly participated in said fraudulent scheme.

XI. That the assets of this estate are insufficient to pay creditors in full.

XII. That heretofore and prior to the commencement of this action, plaintiff demanded in writing of the defendant . . . . ., all the property covered by said alleged bills of sale and defendant has failed, neglected and refused to deliver the said property to plaintiff.

XIII. That plaintiff has no adequate remedy at law.

Wherefore, this plaintiff demands judgment:

1. That the said alleged bill of sale and said agreement of the . . . . . day of . . . . ., 19.., and the said alleged bill of sale purporting to be confirmatory thereof, made on the . . . . . day of . . . . ., 19...., be each and the said transfer of property in pursuance of same, set aside, and declared null and void as made to hinder, delay and defraud the creditors of . . . . . and this plaintiff.

2. That the defendant . . . . . be directed to account for, transfer and deliver to the plaintiff, all of the property, heretofore received by the said . . . . ., defendant by virtue of said alleged bill of sale, agreement and confirmatory bill of sale.

3. That in case the said defendant . . . . . shall have disposed of said property or any part thereof, so that the same cannot be reached, controlled and delivered by the said defendant, and transferred and turned over to this plaintiff, this plaintiff have judgment for the value thereof.

4. That in case the said defendant shall have permitted said property, or any part thereof, to be injured or damaged by use or wear thereof, or otherwise, so that said property shall have in consequence depreciated in value, this plaintiff do further have and recover judgment for the amount of said damage or injury to said property as well as damages for the use and detention thereof.



5. That the defendant, ..... be adjudged to make disclosure and discovery as to any and all of said property received by it from ....., bankrupt, which it now has or which it has disposed of, the whereabouts of which is concealed from and unknown to this plaintiff, in order that such property, where not in possession of said defendant, may be reached and transferred to this plaintiff.

6. That the plaintiff have such other or further order, judgment or relief as to the court may seem just and proper together with the costs and disbursements of this action.

.....,  
*Attorney for plaintiff,*  
 Office and Post Office Address,  
 ..... Street,  
 City of .....

[Verification.]

[Exhibits.]

#### NOTES.

Fraudulent transfers within four months' period, Sec. 67-e and transfers fraudulent under State laws. Sec. 70-a, (4), e, 23-b.

Cross-references 2 (7) (15) 47-a (2) 60-b.

See, Moore on, "Fraudulent Conveyances," Chap. XXIV.

Trustee may maintain action since amendments of 1910 in either State or Federal courts under Sec. 67-e or Sec. 70-e without consent of proposed defendant.

Parker v. Sherman, 28 Am. B. R. 379; 195 Fed. 648.

Hull v. Hudson, 26 Am. B. R. 725.

Johnston v. Forsythe Mercantile Co., 11 Am. B. R. 669; 127 Fed. 845. Drew v. Meyers et al., 22 Am. B. R. 656.

Suit to recover proceeds of fraudulent sale may be brought in equity.

Parker v. Sherman (C. C. A. 2d Cir.), 32 Am. B. R. 393; 212 Fed. 917; 129 C. C. A. 437; aff'g 29 Am. B. R. 862; 201 Fed. 155.

Parker v. Black (C. C. A. 2d Cir.), 18 Am. B. R. 15; 151 Fed. 18; 80 C. C. A. 484. Conveyance of real estate in fraud of creditors.

Winslow v. Staab (D. C. N. Y.), New York Law Journal, April 10, 1916.

Order refusing to direct delivery of property summarily, no bar to subsequent suit to recover by trustee.

Murray v. Joseph, 16 Am. B. R. 704; 146 Fed. 260.

When trustee is not barred by election from maintaining suit to avoid transfer.

Thomas v. Sugarman (U. S. Sup.), 30 Sup. Ct. Rep. 650; 218 U. S. 129; 54 L. Ed. 967; rev'g, s. c. (C. C. A. 2d Cir.), 19 Am. B. R. 509; 157 Fed. 669; 85 C. C. A. 337.

Failure of trustee to contest claim, no bar to suit to recover.

Buder v. Columbia Distilling Co. (Ct. of App. Mo.), 9 Am. B. R. 331.

#### Jurisdiction.

Where creditor could have avoided a transfer under the laws of the State, trustee in bankruptcy has same power.

Mueller v. Bruss, 8 Am. B. R. 442; 112 Wis. 406; 88 N. W. 229.

Hunt v. Doyal (Ga.), 57 S. E. 489.

Under Sec. 70-e trustee may bring an action against president of bankrupt corporation to recover a sum paid him from the corporate funds, whether or not there were any creditors of the corporation at the time of the alleged wrongful transaction or existing creditors holding judgment or attachment liens.

Union Trust Co. v. Amery (Wash. Sup. Ct.), 27 Am. B. R. 499.

Park v. Cameron (U. S. Sup.), 34 Am. B. R. 849; 237 U. S. 616; 59 L. Ed. 1147.

Trustee may proceed whether any creditor is in a position to attack the transfer or not.

Sheldon v. Parker, 11 Am. B. R. 152; 66 Neb. 610; 92 N. W. 923.

Not necessary for trustee to show that a creditor had obtained judgment and issued execution, and had same returned unsatisfied.

Thomas v. Roddy, 19 Am. B. R. 873; 122 App. Div. (N. Y.) 851. Riker v. Gywnne (N. Y. Sup.), 21 Am. B. R. 95; 129 App. Div. (N. Y.) 112. Beasley v. Coggins, 12 Am. B. R. 355; 57 So. 213.

Mueller v. Bruss, 8 Am. B. R. 442; 112 Wis. 406. Mitchell v. Mitchell, 17 Am. B. R. 382; 147 Fed. 280; aff'd, 20 Am. B. R. 924; 160 Fed. 1022; 87 C. C. A. 613.

Trustee alone authorized to bring the action.

Ruhl-Koblegard Co. v. Gillespie (W. Va. Sup. Ct. of App.), 22 Am. B. R. 643.

Rights of creditors.

McMahon v. Pithan (Ia. Sup. Ct.), 33 Am. B. R. 125.

Transfer of expectant estate even though transferee did not participate in the fraud.

Clowe v. Seavey (N. Y. Ct. of App.), 31 Am. B. R. 830; 208 N. Y. 496; aff'g 151 App. Div. (N. Y.) 912; 135 N. Y. Supp. 1105.

May maintain the suit in district other than the one in which he was appointed.

Teague v. Anderson Hardware Co., 20 Am. B. R. 424; 161 Fed. 765.

Receiver in bankruptcy may not bring such suit.

Guarantee Title and Trust Co. v. Pearlman, 16 Am. B. R. 461; 144 Fed. 550.

As to unfilled chattel mortgage.

See, Skilton v. Codington, 15 Am. B. R. 810; 185 N. Y. 80.

#### Parties.

Bankrupt not a necessary party as he has no interest to be affected except what is represented by his trustee.

Cox, Trustee, etc. v. Wall et al., 3 Am. B. R. 664; 99 Fed. 546.

Buffington v. Harvey (U. S. Sup.), 95 U. S. 99.

See, Colvert on Parties (2d Ed.), p. 72.

Loveland on Bankruptcy (4th Ed.), p. 1059.

A fraudulent transferee, who has transferred to another fraudulent transferee all his property rights, is not a necessary party defendant.

Skillin v. Endelman, 11 Am. B. R. 766; 79 N. Y. Supp. 413; 39 Misc. (N. Y.) 261.

#### Allegations of bill.

Complaint should allege that the assets of the estate are not sufficient to pay creditors in full.

Prescott v. Galluccio (D. C. N. Y.), 21 Am. B. R. 229; 164 Fed. 618.

Mueller v. Bruss (*supra*).

Allegation of deficiency of assets since amendment of 1910.

Kraver v. Abrahams (D. C. Pa.), 29 Am. B. R. 365; 203 Fed. 782.

Johnston v. Forsyth Mercantile Co., 11 Am. B. R. 669; 127 Fed. 845.

Trustee may include in his bill of complaint all causes of action which might have been included in creditor's bill.

Carter v. Hobbs, 1 Am. B. R. 215; 92 Fed. 594.

A series of acts covering different conveyances made to different parties may properly be united in one bill in equity by creditors to reach the property, provided it be alleged that the acts were done pursuant to a single fraudulent scheme. A complaint which alleges that such transactions were made without consideration and with continuing intent to defraud is not demurrable.

Wright, Trustee v. Simon (N. Y. App. Div.), 118 App. Div. (N. Y.) 774.

Trustee suing under Sec. 70-e must bring himself within the elements of pleading and proof recognized by the statutes and decisions of the State in which action is brought.

Halbert v. Pranke (Minn. Sup.), 11 Am. B. R. 620.

In re Gray, 3 Am. B. R. 647; 47 App. Div. (N. Y.) 554.

Mueller v. Bruss (*supra*).

Who entitled to share in proceeds of suit.

In re Kohler (C. C. A. 6th Cir.), 20 Am. B. R. 89; 159 Fed. 871; 87 C. C. A. 51.

Suits by trustee — fraudulent transfer.

Right to a jury trial.

In an action by a trustee in bankruptcy to recover the value of personal property claimed to have been disposed of by the bankrupt in fraud of creditors, the plaintiff is entitled to a jury trial, and this is so whether the complaint be construed as based upon the provisions of Sec. 60 or Sec. 70 of the Bankruptcy Act, authorizing a trustee in such cases to recover the property or its value.

Allen v. Gray et al. (N. Y. Ct. of App.), 25 Am. B. R. 423; 201 N. Y. 504; rev'g s. c. 24 Am. B. R. 642; 139 App. Div. (N. Y.) 428.

Compare Cohn v. Small, 18 Am. B. R. 817; 120 App. Div. (N. Y.) 211; aff'd, 190 N. Y. 568.

#### Necessary elements of proof.

Van Iderstine, Trustee v. Nat. Discount Co. (C. C. A. 2d Cir.), 23 Am. B. R. 345; 174 Fed. 518; 98 C. C. A. 300; aff'd, 29 Am. B. R. 478; 227 U. S. 575; 57 L. Ed. 652.

Lyon v. Wallace (Mass. Sup. Ct.), 35 Am. B. R. 688.

Test of validity is the law of the State.

Mattley v. Wolfe (D. C. Neb.), 23 Am. B. R. 673; 175 Fed. 619.

Dodge v. Norlin (C. C. A. 8th Cir.), 13 Am. B. R. 176; 133 Fed. 363; 66 C. C. A. 425.

#### Intent.

In re Hughes (D. C. N. Y.), 25 Am. B. R. 556; 183 Fed. 872.

Underleak v. Scott (Minn. Sup. Ct.), 28 Am. B. R. 926.

McKey v. Smith (Ill. Sup. Ct.), 28 Am. B. R. 864.

Butcher v. Cantor, 26 Am. B. R. 424; 185 Fed. 945.

General verdict of jury cannot be treated as a finding that there was an intent to defraud of which the transferee had knowledge.

Van Iderstine v. Nat. Discount Co. (*supra*).

#### Burden of proof.

When fraudulent transfer has been established.

Bentley v. Young et al. (D. C. N. Y.), 31 Am. B. R. 506; 210 Fed. 202.

Horner-Gaylord Co. v. Miller and Bennett (D. C. W. Va.), 17 Am. B. R. 257; 147 Fed. 295.

In re Schacht Motor Car Co., 31 Am. B. R. 624.

Intent to defraud is the test of the right to avoid a transfer under this section, which applies only to transfers which are fraudulent at common law.

In re Bloch (C. C. A. 2d Cir.), 15 Am. B. R. 748; 142 Fed. 674; 74 C. C. A. 250.

Under Ohio Rev. St., Sec. 6343.

Actual fraud or an intent to defraud need not be shown.

Barber v. Coit (C. C. A. 6th Cir.), 16 Am. B. R. 419; 144 Fed. 381; 75 C. C. A. 319.

Voluntary settlement upon wife.

In re Foss, 17 Am. B. R. 439; 147 Fed. 790.

Milkman v. Arthe (C. C. A. 2d Cir.), 34 Am. B. R. 536; 223 Fed. 507; 139 C. C. A. 55; rev'g, s. c. 33 Am. B. R. 418; 221 Fed. 134.

*Klinger v. Hyman* (C. C. A. 2d Cir.), 34 Am. B. R. 338; 223 Fed. 257; 138 C. C. A. 499.

Mortgage withheld from record.

*In re Hunt*, 14 Am. B. R. 416; 139 Fed. 283.

*Butcher v. Werksman*, 30 Am. B. R. 332; 204 Fed. 330.

*Athens Nat. Bank v. Shackelford* (U. S. Sup.), 239 U. S. 81; aff'g 208 Fed. 677.

Fraudulent and void both as to subsequent and prior creditors.

*In re Duggan* (C. C. A. 5th Cir.), 25 Am. B. R. 479; 183 Fed. 405; 106 C. C. A. 51; aff'g, s. c. 25 Am. B. R. 105; 182 Fed. 252.

[See, Moore "Fraudulent Conveyances," Vol. I., pp. 176-221.]

Mortgage of real estate not required to be recorded in New York as against general creditors and trustee.

*In re Mosher* (D. C. N. Y.), 35 Am. B. R. 284; 224 Fed. 739.

*In re Boyd* (C. C. A. 2d Cir.), 32 Am. B. R. 548; 213 Fed. 774; 130 C. C. A. 288.

#### Fraudulent transfers — recovery.

Plenary suit is in most cases necessary to reach property in hands of third persons since decision of Supreme Court in

*Bardes v. Hawarden Bank*, 4 Am. B. R. 163; 178 U. S. 524; 44 L. Ed. 1175.

Has power though transfer was made more than four months prior to adjudication, subject to the limitation of Sec. 70 (e).

*Bush v. Export Storage Co.* (C. C. Tenn.), 14 Am. B. R. 138; 136 Fed. 918.

*Lewis v. Bishop*, 47 App. Div. (N. Y.) 554; 62 N. Y. Supp. 618. *Beasley v. Coggins*, 12 Am. B. R. 355; 48 Fla. 215; 57 So. 213. *In re Mullen*, 4 Am. B. R. 224; 101 Fed. 413. *Thomas v. Roddy* (N. Y. App. Div.), 19 Am. B. R. 873; 122 App. Div. (N. Y.) 851. *In re Schenck*, 8 Am. B. R. 727; 116 Fed. 564.

*In re Rodgers*, 11 Am. B. R. 79; 125 Fed. 169; 60 C. C. A. 567.

Trustee may bring equity suit to avoid the transfer.

*Beasley v. Coggins* (*supra*). *McNulty v. Feingold*, 12 Am. B. R. 358. *Wall v. Cox* (C. C. A. 4th Cir.), 4 Am. B. R. 659; 101 Fed. 403; 41 C. C. A. 408.

See, s. c. 5 Am. B. R. 727; 181 U. S. 244; 45 L. Ed. 845.

Proceeds of fire insurance contracted by fraudulent transferee of bankrupt's property not recoverable.

*Lewis v. Julius* (D. C. N. Y.), 31 Am. B. R. 575; 212 Fed. 225.

*Trenholm v. Klinker* (Miss. Sp. Ct.), 33 Am. B. R. 562.

In an action in equity by trustee to set aside a transfer of corporate stock claimed to have been made by the bankrupt in fraud of creditors, where decree would not afford full relief, owing to depreciation in value of certificates, the court may award a money judgment against the transferee.

*Wasey v. Holbrook*, 65 Misc. (N. Y.) 84.

Transfer held valid to extent of monies advanced.

*Vollmer v. Plage*, 26 Am. B. R. 590; 186 Fed. 598.

Vendee chargeable with such knowledge as he might have acquired by reasonable inquiry.

*In re Calvi* (D. C. N. Y.), 26 Am. B. R. 206; 185 Fed. 642.

*Wecker v. National Enameling Co.* (U. S. Sup.), 204 U. S. 182; 51 L. Ed. 434.

#### Sale of stock in bulk.

*Johnston v. Forsyth Mercantile Co.*, 19 Am. B. R. 48; 155 Fed. 268.

*Houck v. Christy* (C. C. A. 8th Cir.), 18 Am. B. R. 330; 152 Fed. 612; 81 C. C. A. 602.

*In re Knopf*, 17 Am. B. R. 48; 146 Fed. 109.

Mortgagor remaining in possession, fraudulent under New York Personal Property Law.

*Skillin v. Endelman*, 11 Am. B. R. 766; 79 N. Y. Supp. 413; 39 Misc. (N. Y.) 261.



In Iowa, void as to those who became creditors after execution of, but before recording.

Post v. Berry (C. C. A. 8th Cir.), 23 Am. B. R. 699; 175 Fed. 564; 99 C. C. A. 186.  
In re Bothe (C. C. A. 8th Cir.), 23 Am. B. R. 151; 173 Fed. 597; 97 C. C. A. 547.  
Validity under Massachusetts statute.

Carpenter v. Karnow, 28 Am. B. R. 21; 193 Fed. 762.

New York statute. Parker v. Sherman, 29 Am. B. R. 862; 201 Fed. 155; aff'd, 32 Am. B. R. 393; 212 Fed. 917; 129 C. C. A. 437.

In re Calvi, 26 Am. B. R. 206; 185 Fed. 642.

Godwin v. Tuttle (Ore. Sup. Ct.), 33 Am. B. R. 93.

### Burden of proof.

Sale of entire stock in bulk out of due course of business, is presumptively questionable and casts burden on purchaser to show good faith, etc.

In re Knopf, 16 Am. B. R. 432; 144 Fed. 245. Dokken v. Page (C. C. A. 8th Cir.), 17 Am. B. R. 228; 147 Fed. 438; 77 C. C. A. 674. Allen v. McMannes, 19 Am. B. R. 276; 156 Fed. 615.

Transfer to relative — Burden upon grantee to show good faith.

Horner-Gaylord Co. v. Miller & Bennett, 17 Am. B. R. 257; 147 Fed. 295.

Burden upon complainant to show absence of good faith on part of purchaser of bankrupt's accounts.

Van Iderstine, Trustee v. National Discount Co. (C. C. A. 2nd Cir.), 23 Am. B. R. 345; 174 Fed. 518; 98 C. C. A. 300.

Shelton v. Price (D. C. Ala.), 23 Am. B. R. 431; 174 Fed. 891.

Paying full value will not avoid consequences of fraudulent transaction.

In re Calvi (*supra*).

Mortgage of entire stock; failure to make inquiry.

Johnson v. Dismukes (C. C. A. 5th Cir.), 29 Am. B. R. 686; 204 Fed. 382; 122 C. C. A. 552; aff'd 29 Am. B. R. 84; 199 Fed. 319.

## FORM No. 346.

### BILL IN EQUITY TO RECOVER FRAUDULENT TRANSFER AND ALLEGING CONSPIRACY TO DEFRAUD.

District Court of the United States,

..... District of .....

....., as Trustee  
in Bankruptcy of.....

Bankrupt,  
Plaintiff,

against

.....and.....  
Defendants.

In Equity.

To the Honorable Judge of the District Court of the United States,

for the ..... District of .....

..... as trustee in bankruptcy of ....., bankrupt,



brings this, his bill of complaint against ..... and ....., and thereupon the plaintiff complains and says:

1. That the plaintiff is a citizen of the United States and resides at .... in the ..... District of .....

2. That the defendants ..... and ..... are citizens of the United States and reside at ..... in the ..... District of .....

3. That the jurisdiction of this Court is conferred by the Bankruptcy Act of 1898 and the amendments thereto and the suit is brought to recover a fraudulent transfer of property under Section 70-e of said act.

4. That heretofore and on or about the ..... day of ....., 19.., a petition in involuntary bankruptcy signed and verified by the creditors therein named, was duly filed in the District Court of the United States for the ..... District of ....., praying that ....., a merchant and trader in and manufacturer of ....., having for the greater part of the six months next preceding the filing of the said petition, resided and been engaged in business at ....., within the territorial limits and jurisdiction of the said District Court of the United States for the ..... District of ....., be adjudged an involuntary bankrupt; that thereafter such proceedings were duly had upon said petition, that on or about the ..... day of ....., 19.., an order was duly made and entered in the said District Court of the United States for the ..... District of ....., wherein and whereby it was adjudged and decreed that the said ..... was a bankrupt within the purview of the Acts of Congress relating to bankruptcy; and thereafter such proceedings were duly had upon said petition and adjudication that the first meeting of creditors of the said ..... was duly held at the office of ....., Esq., one of the referees in bankruptcy to whom the said bankruptcy proceeding was referred and such proceedings were duly had at first meeting of creditors, that on or about the ..... day of ....., 19.., the plaintiff was duly appointed trustee of the said ..... and of his assets, duly accepted such appointment and duly filed his bond in the said District Court of the United States for the ..... District of ..... in the sum of ..... dollars as required by the terms of the order of his appointment, which bond was, on or about the ..... day of ....., 19.., duly approved by the said District Court of the United States for the ..... District of ....., in and by an order made upon said day; and thereupon plaintiff entered upon the discharge of his duties as such trustee and now continues in the performance thereof.

That upon information and belief plaintiff further alleges:

5. That at all the times hereinafter mentioned, the respondents ..... and ..... were engaged in business in the City of ....., as ....., under the firm name and style of .....

6. That in the months of ....., and ....., 19.., and within four months of the filing of the said petition in bankruptcy against the said bankrupt ....., the said ..... was insolvent, that is to say, the aggregate of the property of the said ....., exclusive of the property hereinafter referred to as having been conveyed and transferred with intent to hinder, delay and defraud his creditors, was not, at a fair valuation, sufficient in amount to pay his debts.

7. That the said ..... at the times referred to in the last paragraph, well knew that he was thus insolvent.

8. That during the said months of ....., and ....., 19.., and within four months of the filing of the said petition against the said ....., and while the said ..... was insolvent as aforesaid, well knowing the same, the said ..... communicated his financial condition to the respondent ..... and informed the said ..... that he, the said ....., owed large sums of money which he was unable to pay and would be unable to pay, and that his assets were not sufficient to meet his liabilities, and that he was in an insolvent and failing condition, and thereupon the said ....., well knowing the facts thus communicated, conspired with the said ....., and pursuant to said conspiracy, it was agreed by and between the said ..... and the said ..... on his own part and on the part of the said firm of ....., that the said ..... should go out into the market among the merchants of the City of ..... and elsewhere, and should buy largely upon credit from the said merchants, such merchandise as he could procure from them and to the end and purpose that the said ..... might be enabled to purchase large quantities of merchandise from the said merchants upon credit, it was further agreed that in making the purchases the said ..... should represent himself as a merchant of sound financial standing and of sufficient means and ability to pay therefor and should refer the said merchants from whom the said merchandise was to be thus obtained to the said ..... for the purpose of verifying the said assertions of the said ....., and it was thereupon agreed that the said ..... would, upon inquiry by said merchants or on their behalf, state and represent to the said merchants that the said ..... was a man of sound financial standing and of sufficient means and ability to pay for said merchandise; and pursuant to said conspiracy likewise it was agreed that such merchandise as the said ..... should thus obtain from the said merchants should not be paid for, but that the same should be immediately transferred and delivered to the said firm of ....., and sold by them in their business as ..... for such prices as they might obtain and that the proceeds should be kept and secreted from the creditors of the said ..... and from the merchants who were thus defrauded, and applied to the benefit of the said ..... and the said .....

and ..... and the said firm of ....., all of which conspiracy and agreement, your orator avers was made and entered into with the intent on the part of the respondents to hinder, delay, cheat and defraud the creditors of the said .....

9. That in the months of ....., ..... and ..... and within four months of the filing of the said petition against the said ..... and while the said ..... was insolvent as aforesaid, well knowing the same and with the knowledge on the part of the said ..... of the said insolvency and of the extent thereof and pursuant to the terms and stipulations of the corrupt and dishonest agreement set forth in the last paragraph, and pursuant to the said conspiracy to hinder, delay, cheat and defraud the creditors of the said ..... and with the intent on the part of the respondents to hinder, delay, cheat and defraud said creditors of the said ....., the said ..... did go out into the market among the merchants of the City and elsewhere, and did represent himself to be a man of sound financial standing and of sufficient means and ability to pay for the goods hereinafter referred to, and did represent and state to the said merchants that the respondent ..... was one to whom he could refer as to his financial standing and means and ability to pay, and the said merchants largely did inquire of the said ..... as to the standing and financial responsibility of the said ..... and the said ..... did falsely and fraudulently and corruptly state and represent to the said merchants that the said ..... was worthy of credit, whereby and by reason whereof, the said ..... established a large credit and procured large quantities of merchandise with the intent on his part not to pay for the same and with the knowledge of the said ..... that he had thus procured the same with the said intent.

10. That likewise pursuant to the said conspiracy and corrupt agreement hereinbefore referred to, upon obtaining said merchandise in manner and form as above set forth, the said ..... did, during the months of ....., ..... and ....., 19..., and within four months of the filing of the said petition against the said ..... and while insolvent as aforesaid, well knowing the same, transfer, assign and set over to the said firm of ....., and with the intent and purpose of hindering, delaying, cheating and defrauding his creditors, assets consisting largely of the said merchandise thus procured, to the extent and of the fair and reasonable value of the sum of ..... dollars; and the said firm of ..... received the said property of the value aforesaid with the full knowledge on the part of the said ..... of the insolvency of the said ..... and of the intent of the said ..... to hinder, delay, cheat and defraud his creditors and pursuant to the conspiracy hereinbefore set forth.

11. That the said transfers were made by the said ..... to the said ..... to hinder, delay, cheat and defraud his creditors and wise, and the said firm of ..... did not receive the same in



good faith and did not then and there pay therefor a present, fair consideration or any consideration whatever, and the same are null and void under the National Bankruptcy Act, and amendments thereto, and null and void as against the creditors of the said ..... by the Laws of the State of ..... And the plaintiff avers that such property thus transferred passes, pursuant to said Bankruptcy Act, to the plaintiff and brings this his bill to reclaim and recover the same for the benefit of the creditors of the said .....

12. And plaintiff avers that the assets of the said ..... in his possession as trustee are not sufficient to pay the creditors of the said ..... the amounts due them and that the said creditors and the plaintiff are without adequate remedy at law without the equitable intervention of this court, unless this court shall in furtherance of a decree which plaintiff seeks, declare the said transfers to the respondents ..... to have been null and void. To that end therefore the plaintiff prays:

I. That the said respondents ..... and ....., be made respondents to this bill and compelled to answer each and every allegation therein contained but not under oath which is waived, as fully as if directly interrogated as to each.

II. That it may be decreed and adjudged that the transfers of the said property made by the said ..... to the said respondents ..... and ....., are null and void as against the plaintiff as trustee in bankruptcy of the said .....

III. That it may be decreed and adjudged that the respondents account to the plaintiff for the value of the said property which has come into their possession as set forth in plaintiff's bill of complaint.

IV. That plaintiff may have judgment against the respondents in the sum of ..... dollars.

May it please your Honor to grant unto the plaintiff a subpoena of the United States of America, directed to the said ....., ..... and ..... commanding them and each of them on a day certain to appear and answer unto this bill of complaint and to abide by and perform such order and decree in the premises as the court shall deem proper and required by the practice in equity and good conscience.

.....  
Solicitor for plaintiff,  
Office and Post Office Address,  
..... Street,  
City of .....

[Verification.]

NOTES.

Sufficiency of bill.

Strasburger v. Bach (C. C. A. 7th Cir.), 19 Am. B. R. 732; 157 Fed. 918; 85 C. C. A. 246. Ludvigh v. Am. Woolen Co. (D. C. N. Y.), 19 Am. B. R. 795; 159 Fed. 796.

When action not maintainable.

Friedman v. Myers (Cir. Ct. Ohio), 19 Am. B. R. 883.

FORM No. 347.

PETITION TO LEVY ASSESSMENT FOR UNPAID STOCK  
SUBSCRIPTIONS.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER  OF  .....  <i>Bankrupt.</i>	}	No.....
--	---	---------

To the District Court of the United States,  
for the ..... District of .....:  
The petition of ..... respectfully shows and alleges:  
*First.* That he is the Trustee in Bankruptcy herein, duly qualified and acting.  
*Second.* That the said ..... is a corporation, duly organized and existing under the Laws of the State of ....., and had its principal place of business in the ....., City of ..... and was engaged in the manufacture and sale of ..... That on the ..... day of ....., 19.., a petition of creditors of said company was duly filed in this court, praying that the said company be adjudicated an involuntary bankrupt and such proceedings were thereafter had that on the ..... day of ....., 19.., the said ..... was duly adjudicated a bankrupt; that thereafter at the first meeting of creditors herein, held before ..... Esq., as Referee in Bankruptcy, on the ..... day of ....., 19.., your petitioner was appointed trustee in bankruptcy of the estate of the said bankrupt, thereafter duly qualified and filed his bond in the penalty required.  
*Third.* That your petitioner thereafter immediately entered upon his duties and has sold at public auction all of the property and assets of the said bankrupt which came into his hands as trustee and has collected and reduced to cash all of the assets of the said bankrupt which your petitioner has been able to discover.  
*Fourth.* That there have been filed in the office of the referee in charge of this proceeding proofs of debt aggregating the sum of \$....., which said claims have been proved and allowed, and that no further claims under the Bankruptcy Act can now be filed against this estate, as the year allowed by such Act in which creditors may file claims has now expired.



*Fifth.* That your petitioner out of the moneys in his hands belonging to this estate has paid the taxes due from said company to the City of ....., a portion of the expenses of administration under orders of this Court and a dividend of ..... upon the claims of creditors duly filed and allowed herein and now has in his hands as trustee on deposit in the ..... Bank, a designated depository of this court, a balance of \$....., which your petitioner believes will be insufficient to pay the further expenses of administration as may hereafter be allowed by this court, and that no part of same will therefore become applicable to the payment of any further dividend to creditors herein.

*Sixth.* That the said ..... was organized in ....., 19.., with a capital stock of \$..... consisting of ..... shares of the par value of \$..... each. That at the time of the adjudication herein, of this number, ..... shares were actually issued and the balance, consisting of ..... shares, remained in the treasury of the company. That the original subscribers to the stock of said company and the amount subscribed for by each are as follows:

.....	..... shares
.....	..... shares
.....	..... shares
.....	..... shares
.....	..... shares
.....	..... shares

That on the .....day of ....., 19.., said certificates of stock in the number of shares as above set forth, were allotted, issued and delivered to the said several subscribers. That as appears by the books of said company, and as your petitioner is informed and verily believes, the said shares of stock issued to ....., ....., ....., ....., and ....., as full paid stock were not in fact full paid stock but were issued by the said ..... to the said subscribers upon payment by them and each of them of ..... per cent. of the par value of said stock and that the balance due from said subscribers upon said stock has always remained and still is unpaid. That the amounts remaining unpaid upon such stock are as follows:

Name	Residence	Amt. Sub.	Amt. Pd.	Amt. Due.
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

*Seventh.* That immediately after its incorporation the said ..... commenced business in the City of ..... and incurred a large

amount of indebtedness, the claims for which have been filed and allowed in this proceeding.

*Eighth.* That as above stated the assets of said bankrupt company which have come into the hands of your petitioner or were discoverable, were insufficient to pay the debts of the said company and that a deficiency exists of at least ..... per cent. of the amount of such claims as filed and allowed. That unpaid stock subscriptions constitute a trust fund for the payment of the debts of creditors and an assessment should be made upon the stockholders of the ..... upon their unpaid subscriptions to an amount sufficient to discharge the debts of said company and that such assessment should be levied and ordered paid by this court. That so far as your petitioner has been able to learn from the books of said company and the testimony of the officers thereof, the above named persons are the only subscribers to said capital stock who have not paid their said several stock subscriptions.

*Ninth.* That in the opinion of your petitioner an assessment of at least ..... per cent. upon the unpaid subscriptions to the capital stock of this company would be sufficient to pay the balance of the indebtedness of said bankrupt and the costs and expenses of this proceeding.

*Tenth.* No previous application has been made for the order asked for herein.

Wherefore, your petitioner prays for an order authorizing and empowering him as trustee in bankruptcy herein of the ..... to issue a call for the unpaid subscriptions to the capital stock of the said company for the purpose of paying the debts of said company and for an order directing that an assessment of ..... per cent. be levied upon the above named subscribers to the capital stock of the said ..... upon the amount remaining unpaid upon their said several stock subscriptions and that same be paid by said subscribers to your petitioner as trustee on or before the ..... day of ....., 19..., and that said subscriptions when paid or collected be accounted for and distributed under the orders of this court, and in default of such payment, your petitioner as trustee of the estate of the said bankrupt, be authorized and directed to institute such proceedings either at law or in equity against said stockholders as may be necessary to recover the amount assessed upon said stock.

.....,  
*Petitioner.*

[Verification.]

## FORM No. 348.

## ORDER DIRECTING ASSESSMENT FOR UNPAID STOCK SUBSCRIPTIONS.

At a Stated Term of the District Court  
of the United States for the .....  
District of ....., held at the  
Court House, in the City of ....., on  
the ..... day of ....., 19...

Present:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

.....  
*Bankrupt.*

Upon the annexed petition of ....., verified ....., 19..., the adjudication in bankruptcy and all the proceedings had herein, and it appearing to my satisfaction that the assets in the hands of the said trustee are insufficient to pay the debts of said bankrupt company, duly filed and allowed, and on motion of ....., attorney for the said trustee, it is

Ordered, that an assessment be levied upon the subscribers to the capital stock of the ..... Company the bankrupt herein, for the purpose of paying the debts of said bankrupt, as proved and allowed, to an amount equal to the unpaid amounts upon their said several stock subscriptions.

And it is further ordered, that ....., the trustee in bankruptcy herein, be and he hereby is authorized and directed to collect the said assessment as herein ordered, and to make and issue a call upon the subscribers to the capital stock of the bankrupt herein, requiring them to pay the amount remaining unpaid upon their several stock subscriptions to said trustee on or before ....., 19....

And it is further ordered, that the said trustee keep an accurate account of said stock subscriptions so collected and upon the payment of the debts of said bankrupt, as proved and allowed, to return the residue, if any, pro rata to the persons entitled thereto.

And it is further ordered, that the said trustee in default of payment by those to whom such call has been duly made is authorized and empowered to

institute such proceedings either at law or in equity against said stockholders as may be necessary to recover the said assessment.

.....,  
D. J.

**FORM No. 349.**

**COMPLAINT TO RECOVER UNPAID STOCK SUBSCRIPTIONS.**

..... Court of .....,  
County of .....

....., as Trustee in Bankruptcy of..... Plaintiff, against ....., .....and..... Defendants.	} Complaint.

..... as trustee in bankruptcy of ..... for his complaint against the above named defendants respectfully shows and alleges to this Court:

First. That the ..... Company, hereinafter mentioned, is a corporation organized and existing under and by virtue of the laws of the State of ....., and having heretofore had at the time of its adjudication in bankruptcy, its principal place of business at the City of ....., State of .....

Second. Plaintiff further shows and alleges, that on the ..... day of ....., 19.., a petition of creditors of said ..... Company was duly filed in the United States District Court for the ..... district of ....., praying that the said company be adjudicated a bankrupt, and such proceedings were thereafter had that on the ..... day of ....., 19.., the said ..... Company was duly adjudicated a bankrupt, and the proceeding was referred to ....., Esq., one of the referees in bankruptcy of the United States District Court for ..... district of ..... That, thereafter at the first meeting of creditors duly held before the said referee on the ..... day of ....., 19.., the plaintiff was appointed trustee in bankruptcy of the said bankrupt and duly qualified, filed his bond in the penalty required and is still acting as such trustee.

Third. Plaintiff further shows and alleges, that as such trustee he has collected and reduced to cash, all of the property, assets and effects of the said bankrupt, other than the unpaid stock subscriptions, and that said moneys which have come into his hands as trustee and belong to the estate in bankruptcy, are insufficient to pay the expenses of administration and that no part of same are applicable for the payment of the debts of said bankrupt, or any dividend to creditors of said bankrupt, and that no dividend has heretofore been paid.

Fourth. The plaintiff further shows and alleges, that there have been filed in the office of the referee in bankruptcy herein, during the year provided and allowed by the Bankruptcy Act, for the filing of claims, claims aggregating \$....., which said claims have been proved and allowed, and that the time in which to file claims in said bankruptcy proceeding has now expired.

Fifth. On information and belief, plaintiff further shows and alleges, that prior to the organization of the ..... Company, the bankrupt above named, there was a corporation organized and existing by and under the laws of the State of ....., known as the "..... Company," of which corporation all of the defendants herein, with other persons, were directors and stockholders. A re-organization of said ..... Company having been deemed necessary, the defendants with other stockholders of said company, consented to a plan of re-organization, which provided for the payment of the debts of the said company and that all interested financially be given stock in a new corporation all on the same basis, and in order to prevent losses which would result through a liquidation of said ..... Company, and to save the costs and expenses incident thereto, that the directors thereof resign and agree to accept stock in the new company to be formed. That all of the defendants herein signed and executed in writing such re-organization agreement and thereafter resigned as directors of the ..... Company as provided by said plan. That pursuant to such re-organization, on or about the ..... day of ....., 19.., the defendants and each of them, executed and delivered to one....., the promoter thereof, a written agreement, a copy of which is hereto annexed, marked Exhibit "A" and made a part of this complaint.

Sixth. That on information and belief, thereafter and on or about the ..... day of ....., 19.., pursuant to said agreement, Exhibit "A," the said ..... Company, mentioned in said exhibit was duly organized and incorporated under the laws of the State of ....., with an authorized capital stock of ..... dollars (\$.....) consisting of ..... dollars (\$.....) ..... per cent., (...%) cumulative preferred stock, and ..... dollars (\$.....) common stock; that thereafter and prior to ....., 19.., said stock subscription agreement (Exhibit "A") was duly delivered to and accepted by said ..... Company and the stock allotted to the said several



subscribers as provided by the terms of said agreement Exhibit "A," and the defendants were so notified.

Seventh. On information and belief, the plaintiff further alleges that in reliance upon said subscription agreement and the capital thereby provided and assured, the ..... Company, the bankrupt herein, began active operations in the business of the manufacture and sale of ..... and incurred debts and liabilities, which are still unpaid.

Eighth. That, as plaintiff is informed and verily believes, the defendants, though frequently requested so to do, have failed and refused to pay to said corporation the amounts of their several stock subscriptions, except, as plaintiff is informed and verily believes, the defendant ..... has paid thereon the sum of \$....., the defendant ..... the sum of \$....., and have received stock therefor. That the time provided in said stock subscription agreement since notice of allotment and call has long since expired. That the amounts remaining unpaid upon subscriptions to the stock of the ..... Company, bankrupt, are as follows:

.....,	defendant,	\$.....
.....,	"	\$.....
.....,	"	\$.....
.....,	"	\$.....
Total		<hr/> \$.....

Ninth. That, upon information and belief, the said ..... Company was at all the times aforesaid, ready, willing and able to deliver to each of the defendants upon payment therefor, the balance of said stock subscribed for, and so notified each of said defendants.

Tenth. The plaintiff further alleges and shows, that upon the petition of plaintiff, duly verified, the United States District Court for the ..... District of ....., made an order, dated the ..... day of ....., 19.., ordering and directing that an assessment be levied upon the subscribers to the capital stock of said bankrupt company for the purpose of paying the debts of said bankrupt, as proved and allowed in said bankruptcy proceeding to an amount equal to the unpaid amounts upon the several stock subscriptions and directing the trustee to make a call for same and requiring payment thereof on or before ....., 19.., a copy of which order is hereto annexed, marked Exhibit "B." That pursuant to said order, the plaintiff made and issued such call to each subscriber to the capital stock of said bankrupt upon whose subscription there remained a balance unpaid, annexing therewith a copy of said order of ....., 19.., above mentioned. That said call was duly so made upon each of the defendants herein. That all and each of said defendants have neglected and refused to obey said order and have paid no part of the assessment ordered and directed by said bankruptcy court, and the time to comply with said order has now expired.

Eleventh. That the plaintiff has no adequate remedy at law.

Wherefore, plaintiff prays:

First. That it be ordered, adjudged and decreed that the defendants, and each of them, pay to the plaintiff such several amounts upon their unpaid subscriptions to the capital stock of the ..... Company, bankrupt, as may be sufficient in the aggregate to pay the debts of said company, amounting to \$. ..... and the costs and expenses of this action.

Second. That the plaintiff have judgment against the defendants, and each of them, for such unpaid stock subscriptions or for such part thereof as may be sufficient to pay the said debts of the ..... Company, bankrupt, and the costs and expenses of this action.

Third. That the plaintiff have such other and further relief in the premises as to this court may seem just and proper.

.....,

*Attorney for Plaintiff.*

(Address.)

[Verification.]

[Add Exhibits.]

# NOTES.

## Action to recover unpaid subscriptions to stock.

Power of court to order assessment.

In re Miller Electrical Maintenance Co., 6 Am. B. R. 701; 111 Fed. 515.

In re Crystal Spring Bottling Co., 3 Am. B. R. 194; 96 Fed. 945.

In re Eureka Furniture Co. (D. C. Pa.), 22 Am. B. R. 395; 170 Fed. 485.

In re New Foundland Syndicate (C. C. A. 3rd Cir.), 29 Am. B. R. 858; 201 Fed. 917; 120 C. C. A. 255; mod'g, s. c. 28 Am. B. R. 19; 196 Fed. 443.

Assessment denied.

In re Monarch Corporation, 28 Am. B. R. 382; 203 Fed. 664; 122 C. C. A. 60.

See also, s. c. 24 Am. B. R. 428; 196 Fed. 252.

Preliminary assessment necessary.

Rosoff v. Gilbert Transportation Co., 30 Am. B. R. 359; 204 Fed. 349.

Hunt v. Sharkey (Cal. Ct. of App.), 31 Am. B. R. 894.

## Petition for call.

In re Remington Auto & Motor Co. (C. C. A. 2d Cir.), 18 Am. B. R. 389; 153 Fed. 345; 82 C. C. A. 421; aff'g, s. c., 15 Am. B. R. 214; 139 Fed. 766.

In re Munger Vehicle Tire Co., 21 Am. B. R. 395; 168 Fed. 910; 94 C. C. A. 314.

Clevenger v. Moore (Sup. Ct. N. J.), 12 Am. B. R. 738.

In re A. Goodman Shoe Co., 3 Am. B. R. 200; 96 Fed. 949.

See, Firestone Tire & Rubber Co., etc. v. Agnew (N. Y. Ct. of App.), 21 Am. B. R. 292; 194 N. Y. 165.

Effect of order for assessment.

In re M. Stipp Construction Co. (C. C. A. 3rd Cir.), 34 Am. B. R. 333; 221 Fed. 372; 137 C. C. A. 180.

Right of trustee to bring action.

In re Remington Automobile and Motor Co. (D. C. N. Y.), 9 Am. B. R. 533; 119 Fed. 441.

Allen v. Grant, Trustee (Ga. Sup. Ct.), 14 Am. B. R. 349.

Thrall v. Union Maid Tobacco Co. (O. Com. Pl.), 22 Am. B. R. 287.

*Skillin v. Magnus* (D. C. N. Y.), 19 Am. B. R. 397; 162 Fed. 689.

Where corporation has no right to enforce, trustee has none.

*Sternbergh v. Duryea Power Co.* (C. C. A. 3rd Cir.), 20 Am. B. R. 625; 161 Fed. 540; 88 C. C. A. 482.

When plenary proceedings are necessary, Bankruptcy Court may leave the question of amount due by stockholders to court in which suit is brought.

*Babbitt v. Read* (C. C. N. Y.), 23 Am. B. R. 254; 173 Fed. 712.

Suit must be of a plenary character.

*Kiskadden v. Steinle* (C. C. A. 6th Cir.), 29 Am. B. R. 346; 203 Fed. 375; 121 C. C. A. 559.

Liability of stockholders.

*Babbitt v. Read* (D. C. N. Y.), 215 Fed. 395.

Suit not maintainable by trustee under Minnesota statute.

*Courtney v. Georger* (D. C. N. Y.), 34 Am. B. R. 517; 221 Fed. 502; aff'd, 36 Am. B. R. 20; 228 Fed. 859.

Subscription agreement limits liability.

*Southworth v. Morgan*, 205 N. Y. 293.

A trustee in bankruptcy cannot maintain an action under N. Y. Stock Corporation Law against stockholders for a balance of the par value of stock issued as full paid for property purchased, but not so in fact.

In re *The Jassoy Company* (C. C. A. 2d Cir.), 23 Am. B. R. 622; 178 Fed. 515; 101 C. C. A. 641; dist'g In re *Remington Automobile Co.*, 18 Am. B. R. 389; 153 Fed. 345.

Action to enforce a statutory liability of stockholders to creditors imposed by Sec. 56 (N. Y. Cons. Laws 1909, Ch. 59).

May not be maintained by a trustee in bankruptcy.

*Breck v. Brewster* (N. Y. App. Div.), 31 Am. B. R. 842; 153 App. Div. (N. Y.) 800; 138 N. Y. Supp. 821.

## PART XIV.

### WRITS AND INDICTMENTS.

- FORM No. 350. Petition for Order in Nature of Ne Exeat.  
351. Order in Nature of Ne Exeat.  
352. Bond on Ne Exeat.  
353. Petition for Writ of Habeas Corpus.  
354. Writ of Habeas Corpus.  
355. Petition for Writ of Mandamus.  
356. Indictment for Conspiracy to conceal Property from Trustee.  
357. Indictment for Perjury in Bankruptcy Proceeding.

#### FORM No. 350.

##### PETITION FOR ORDER IN NATURE OF NE EXEAT.

United States District Court,  
..... District of .....

IN THE MATTER  
OF

.....  
*Bankrupt.*

To the United States District Court,  
for the ..... District of .....

The petition of ..... respectfully shows and alleges:

1. That he is the receiver in bankruptcy (or a creditor in the amount of \$.....) of the above named ..... bankrupt.

2. That on the ..... day of ....., 19.., a petition in bankruptcy was filed in this court against the above named bankrupt by ....., ..... and ..... creditors and on said day petitioner (or ..... ) was duly appointed receiver, duly qualified and is now acting as such receiver.

3. No answer has been filed to said petition by said bankrupt, nor have assets of any substantial value come into the possession of said receiver.

4. That the said ..... bankrupt has lately and since the filing of said petition in bankruptcy declared in the presence of witnesses as appears by the affidavits of ..... and ..... severally duly verified hereto attached that he is about to leave this jurisdiction and the

United States and go to reside in foreign parts beyond the jurisdiction of this Court and your petitioner verily believes that such is his intention and, if the said ..... shall be allowed to leave and depart out of the district, it will tend to impair, impede and defeat the orders and decrees of this Court and enable the said bankrupt to avoid examination herein and result in great loss to this estate and militate against the recovery of assets concealed or fraudulently disposed of by said bankrupt.

5. No previous application has been made for the order prayed for herein.

Wherefore, petitioner prays for an order requiring the marshal of this district forthwith to apprehend and take into his custody the bankrupt herein to the end that he may not depart from the jurisdiction of this Court and for such other and further relief as may be just and proper.

.....,  
*Petitioner.*

[Verification.]

### FORM No. 351.

#### ORDER IN NATURE OF NE EXEAT.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER

OF

.....  
*Bankrupt.*

To the United States Marshal for ..... District of .....  
or any of his deputies:

Whereas, it appears to the satisfaction of the District Court of the United States for the ..... District of ....., sitting in bankruptcy, on the petition of ....., duly verified, and the affidavits of ..... and ....., duly verified wherefrom it appears that the said bankrupt is greatly indebted to the said petitioners and other creditors, and that he has disposed of all of his property for the purpose of hindering, delaying and defrauding the petitioners and other creditors, and is about to leave the district, and the jurisdiction of this court (to avoid



examination), and the said alleged bankrupt has disposed of, removed and concealed all of his property with intent to hinder, delay and defraud the petitioners and other creditors for the purpose of going into other parts beyond the jurisdiction of this court, tending to the great prejudice and damage of these petitioners and the creditors of the said bankrupt, and to the prejudice of and intending to impair, impede and defeat the orders and decrees of this court in this matter of and concerning the person and property of.....  
..... said bankrupt.

Now, therefore, in order to prevent this injustice, we command you that you do without delay apprehend and take into custody ..... said bankrupt, and bring him forthwith before me for examination, or at his option, to cause him to give sufficient bail or security in the sum of..... dollars, to be approved by this court, or the clerk thereof, that he, the said ..... will not depart from or go, or attempt to depart from or go beyond the territorial jurisdiction of this court without its leave, and will at all times and in all manner, respect and things, obey and comply with the lawful orders and decrees of the Court herein for his examination, which shall or may be made on behalf of the said petitioners or other creditors of the said bankrupt.

Witness, the Honorable ....., Judge of the District Court of the United States sitting in the ..... District of ....., at the Federal Court House ....., City of ....., on the ..... day of ..... 19..

.....,

*D. J.*

NOTES.

**Order in nature of writ of ne exeat.**

See Act, Sec. 9-b, Sec. 2, (15). Compare 36 U. S. Stat. at L. 1162.

Collier (10th Ed.), 256, 257.

Limitations as to time, important.

Affidavits of two persons generally considered necessary.

Bankrupt may move for release or furnish bond.

Not limited under broad powers of Sec. 2, (15) to purposes of examination, under which section the application is usually made.

In re Cohen (D. C. Ill.), 14 Am. B. R. 355; 126 Fed. 599.

In re Lipke (D. C. N. Y.), 3 Am. B. R. 569; 98 Fed. 970.

Curing irregularity.

In re Berkowitz (D. C. N. J.), 22 Am. B. R. 231.

A warrant cannot be issued under this subsection solely as a basis for extradition proceedings in another district to bring the bankrupt to the district in which the detention warrant has been issued.

In re Ketchum (C. C. A. 6th Cir.), 5 Am. B. R. 532; 108 Fed. 35; reported as, In re Hassenbusch, 47 C. C. A. 177; dist'g In re Lipke (*supra*).

What constitutes waiver of examination.

In re Lipke (*supra*).

Where bankrupt is released upon giving a bond conditioned to remain constantly within the jurisdiction of the court, his absence therefrom from time to time constitutes a breach of the bond.

In re Appel (C. C. A. 1st Cir.), 20 Am. B. R. 890; 163 Fed. 1002; 90 C. C. A. 172.  
 The Bankruptcy Court has power to cancel the bond. In re Appel (*supra*).  
 As to sufficiency of affidavit on application.  
 Hoffslaeger Co. v. Young Nap., 12 Am. B. R. 510.

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### FORM No. 352.

#### BOND ON NE EXEAT.

Know all men by these presents: That we ..... and .....  
 Principals, and ..... and ..... sureties, are held and firmly  
 bound unto the People of the United States of America in the sum of .....  
 (.....) dollars, lawful money of the United States: for which payment well  
 and truly to be made, we bind ourselves and our several heirs, executors and  
 administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the ..... day of ....., nineteen  
 hundred and .....

Whereas a certain proceeding in bankruptcy was duly instituted in the  
 district court of the United States, for the ..... district of .....  
 on the ..... day of ....., 19.., by ..... and .....  
 praying that they be adjudicated bankrupts; and

Whereas in the said proceeding upon proof made to the satisfaction of the  
 District court of the United States for the ..... district of .....,  
 a writ was granted by the Hon. ....., Judge of said court in  
 said district, commanding the United States marshal in and for the .....  
 district of ..... to apprehend and take into custody the said  
 ..... and ..... and to require each of them to give bail  
 in sum of ..... (....) dollars, that they the said .....  
 and ..... will not depart or go or attempt to go or depart from or  
 beyond the jurisdiction of the United States District Court for the .....  
 district of ..... in bankruptcy, without the leave of the said United  
 States District Court for the ..... district of ..... in  
 bankruptcy, first had and obtained, and will and at all times and in all  
 matters, respects and things, promptly and punctually obey and comply with  
 the lawful orders and decrees of the said court which shall or may be made  
 in the said proceedings in behalf of the petitioner and other creditors of the  
 said ..... and ....., in which the creditors of  
 the said ..... and ..... shall or may be interested  
 or in any way concerned: and

Whereas the United States marshal in and for the ..... district  
 of ....., pursuant to the said writ, did apprehend and take  
 into custody the said ..... and ..... who being desirous  
 of giving the security in and by said writ required for the performance of the

lawful orders and decrees of said District Court of the United States, as in said writ provided, and remaining within said jurisdiction.

Now, therefore, the condition of this obligation is such that if the bounden ..... and ..... shall not depart or go or attempt to go or depart from or beyond the jurisdiction of the United States District Court for the ..... district of ..... in bankruptcy, without the leave of the said court first had and obtained, and will at all times and in all matters, respects and things obey and comply with the lawful orders and decrees of the said District Court of the United States for the ..... district of ..... in bankruptcy, which ..... shall or may be made in the said proceeding in behalf of the petitioners and other obligation to be void: otherwise to be and remain in full force, virtue and creditors of the said ..... and ....., then this effect.

In witness whereof we have hereunto set our hands and seals this ..... day of ..... in the year nineteen hundred and .....

[Signatures and seals.]

In presence of:

.....  
..... District of ....., ss.:

On this ..... day of ..... 19.., before me personally appeared the foregoing and within named ..... and ....., to me known and known to me to be the individuals described in and who executed the foregoing undertaking and severally duly acknowledged to me that they executed the same.

.....  
*U. S. Commissioner.*

Approved as to form and sufficiency.

.....  
[Acknowledgment by Sureties.]

FORM No. 353.

PETITION FOR WRIT OF HABEAS CORPUS.

United States District Court,  
..... District of .....

IN THE MATTER  
  
OF  
  
the Application of ..... for a  
Writ of Habeas Corpus.

To the Honorable ....., Judge of the ..... Court  
of the United States for the ..... district of .....  
....., your petitioner, respectfully alleges and shows:

I. That your petitioner is a citizen of the United States, an inhabitant and  
citizen of the State of ..... and a resident of ..... in this  
district.

II. Your petitioner has verified and filed in the district court for the  
..... district of ....., a petition that he may be forthwith  
adjudged a voluntary bankrupt, upon which he has been duly adjudicated  
such bankrupt on the ..... day of ....., 19.., and the proceeding  
duly referred to ....., one of the referees in bankruptcy.

III. Your petitioner is and since ....., 19.., has been actually  
confined and imprisoned in the county jail of ..... County by  
..... the Sheriff thereof, under and by authority of an execu-  
tion against his person for the amount of costs obtained against him by one  
....., in an action brought by your petitioner in the.....  
Court of the State of ....., against said ....., for false  
imprisonment and other wrongs committed by said ..... against your  
petitioner; and such imprisonment is for no other cause.

IV. That the claim to enforce which said body execution was issued, is one  
constituting a debt dischargeable in bankruptcy.

V. That it is impossible for your petitioner to attend at the meeting of  
creditors or other proceedings before said referee in bankruptcy, or to comply  
with orders in bankruptcy or to qualify himself by such compliance for his  
discharge and the bankruptcy law will be, so far as its beneficial provisions are  
concerned, as to him, nullified, if his imprisonment shall continue during the  
pendency of said proceedings in bankruptcy.

Wherefore, your petitioner prays that a writ of *habeas corpus* issue directed  
to ....., sheriff of ..... County as aforesaid or to



any of his deputies requiring him or them to bring and have your petitioner before this court at a time to be by it determined together with the true cause of his detention to the end that due inquiry may be had in the premises, and for his release either absolutely, or during the pendency of said bankruptcy proceedings, and upon such terms as may be proper to enable your petitioner to comply with the orders in bankruptcy and so far as it may be proper to maintain the jurisdiction of said district court in bankruptcy. And your petitioner will ever pray.

.....,

*Petitioner.*

.....,

*Attorney for Petitioner.*

.....,

.....

[Verification.]

# NOTES.

Habeas corpus.

Sec. 9 (a).

**General Orders XII, XXX.** [Annex Order of Commitment.]

When bankrupt entitled to writ.

United States ex rel. Mansfield v. Flynn, Supt., etc., 23 Am. B. R. 294.

Does not warrant a release from custody under an arrest made before the filing of the bankruptcy petition except in certain instances.

In re Claiborne (D. C. N. Y.), 5 Am. B. R. 812; 109 Fed. 74.

Otherwise, if detention is based upon a contractual obligation.

People ex rel. Taranto v. Erlanger (D. C. N. Y.), 13 Am. B. R. 197; 132 Fed. 883.

Bankrupt entitled to release from imprisonment when detained under an order of the Federal court made after adjudication in conversion action.

In re Wenman (D. C. N. Y.), 16 Am. B. R. 690; 153 Fed. 910.

When claim, though provable, is not dischargeable, the writ will not be granted.

In re Baker (D. C. Kas.), 3 Am. B. R. 101; 96 Fed. 954.

In re Marcus (C. C. A. 1st Cir.), 5 Am. B. R. 365; 105 Fed. 907; 45 C. C. A. 115.

*Contra.* In re Lewensohn (D. C. N. Y.), 3 Am. B. R. 594; 99 Fed. 73.

In re Dresser (D. C. N. Y.), 10 Am. B. R. 270; 124 Fed. 915.

In re Adler (C. C. A. 2d Cir.), 16 Am. B. R. 414; 144 Fed. 659; 75 C. C. A. 461.

In re Hilton, 4 Am. B. R. 774; 104 Fed. 981.

When entitled to writ from allegations of pleadings.

Barrett v. Prince (C. C. A. 7th Cir.), 16 Am. B. R. 64; 143 Fed. 302; 74 C. C. A. 440.

Pending petition to review an order denying a petition to revoke a discharge, court may restrain the arrest of bankrupt based upon a claim within Sec. 9-a.

In re Chandler, 13 Am. B. R. 614; 135 Fed. 893.

Application may be made to either State or Federal court.

United States ex rel. Scott v. McAleese (C. C. A. 3d Cir.), 1 Am. B. R. 650; 93 Fed. 656; 35 C. C. A. 529.

When bankrupt is imprisoned by State court for contempt, writ should not be granted.

In re Fritz (D. C. N. Y.), 18 Am. B. R. 244; 152 Fed. 562.

People ex rel. Otterstedt v. Sheriff of Kings Co., 31 Am. B. R. 84; 206 Fed. 566.

Also, when imprisoned for contempt of order in the bankruptcy proceedings.



In re Alper, 19 Am. B. R. 612; 162 Fed. 207.

Bankruptcy Court has jurisdiction to punish for contempt of its authority and its action is not reviewable by Circuit Court upon writ of *habeas corpus*.

Ex parte O'Neal, 11 Am. B. R. 196; 125 Fed. 967.

In re Bick (C. C. N. Y.), 19 Am. B. R. 68; 155 Fed. 908.

Bankrupt arrested under a judgment for breach of promise to marry, entitled to writ.

In re Fife, 6 Am. B. R. 258; 109 Fed. 880.

Judgment in action for assault and battery.

Determination as to whether injury was wilful and malicious.

United States ex rel. Kelley v. Peters (D. C. Ill.), 22 Am. B. R. 177; 166 Fed. 613; rev'd, 177 Fed. 885.

Imprisoned upon a judgment for support of bastard child, not entitled to writ.

In re Baker, 3 Am. B. R. 101; 96 Fed. 954.

District Court has power to release upon *habeas corpus* bankrupt under arrest in State court for non-payment of alimony.

Wagner v. United States and Houston (C. C. A. 6th Cir.), 4 Am. B. R. 596; 104 Fed. 133; 43 C. C. A. 445.

#### **Habeas corpus ad testificandum.**

Not granted by Bankruptcy Court to require production of witness for examination, when witness is confined in a hospital for the criminal insane in another State.

In re Thaw (C. C. A. 3d Cir.), 21 Am. B. R. 561; 166 Fed. 71; 91 C. C. A. 57.

Arrest may be held to apply to continued detention after adjudication of a person who had been taken into custody on civil process prior to such adjudication.

Turgeon v. Emery (D. C. Me.), 25 Am. B. R. 694; 182 Fed. 1016.

An order committing relator for contempt granted without a certificate from the referee before whom the contempt was committed is not subject to collateral attack by *habeas corpus*.

Certificate not jurisdictional but merely a procedural necessity.

United States ex rel. Birnbaum v. Henkel (C. C. N. Y.), 26 Am. B. R. 199; 185 Fed. 553.

Writ does not review the regularity of the order, but the validity of the commitment. s. c. (*supra*).

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### **FORM No. 354.**

#### **WRIT OF HABEAS CORPUS.**

The President of the United States to . . . . ., Esq., (United States Marshal for the . . . . . district of . . . . .,) greeting:

We command you, that you have the body of . . . . ., by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name he shall be called or charged before the . . . . . court of the United States in and for the . . . . . district of . . . . . in the . . . . . circuit, on the . . . . . day of . . . . ., 19.., at . . o'clock in the . . . noon of that day, to do and receive what shall then and there be considered concerning the said . . . . .; and have you then there this writ.

Witness the Honorable ..... United States District Judge for  
the ..... district of ....., the ..... day of .....,  
one thousand, nine hundred and .....

[Seal.]

.....  
Clerk of the ..... Court of the United  
States for the ..... District of.....

The foregoing writ is hereby allowed. The petitioner may be admitted to  
bail in the sum of \$...... pending the proceedings thereon.

.....  
*U. S. District Judge.*

**FORM No. 355.**

**PETITION FOR WRIT OF MANDAMUS.**

Supreme Court of the United States.

IN THE MATTER

OF

the Application of ..... for a  
Writ of Mandamus.

To the Honorable ....., Chief Justice of the United States, and  
the Associate Justices of the Supreme Court of the United States:

The petition of ....., a citizen and resident of the City of  
....., State of ..... respectfully shows:

I. [Here recite fully nature of proceeding and all steps taken in courts  
below.]

II. [Recite order and error complained of.]

Wherefore, your petitioner prays that a rule be made and issue from this  
Honorable Court, directing the said ..... to show cause, why a  
writ of mandamus should not issue commanding the said .....  
Court (or Judge) to, etc. (Set forth relief required), or for such other and  
further relief as to this Honorable Court may seem just and meet.

And your petitioner will ever pray, etc.

.....  
.....  
*Attorney for Petitioner,*

Address.

.....  
*Counsel.*

[Verification.]

## NOTES.

Writ of mandamus is to compel the performance of a clear legal duty, where party aggrieved has no other adequate remedy.

When lower court refuses to act on a matter properly before it, mandamus will lie.

When granted.

Requiring district judge to allow appeal from order refusing confirmation of composition.

United States ex rel. Adler v. Hammond (C. C. A. 6th Cir.), 4 Am. B. R. 736; 104 Fed. 862; 44 C. C. A. 229; rev'g 4 Am. B. R. 583; 103 Fed. 444.

When application for writ denied.

In re Plaut, Trustee, 21 Am. B. R. 929; 172 Fed. 1023; 96 C. C. A. 666.

In re McCall (C. C. A. 6th Cir.), 16 Am. B. R. 670; 145 Fed. 898; 76 C. C. A. 430.

An order appointing a receiver.

Edinburg Coal Co. v. Humphreys (C. C. A. 7th Cir.), 13 Am. B. R. 593; 134 Fed. 839; 67 C. C. A. 435.

In re Saratoga Gas etc. Co., 21 Am. B. R. 592.

Peremptory writ from Circuit Court of Appeals to district judge to compel compliance with decision of Supreme Court.

Ex parte First Nat. Bank of Chicago (U. S. Sup.), 19 Am. B. R. 542; 207 U. S. 61; 52 L. Ed. 103; rev'g Ex parte Chicago Title & Trust Co., 16 Am. B. R. 848; 146 Fed. 742; 77 C. C. A. 408.

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**FORM No. 356.**
**INDICTMENT FOR CONSPIRACY TO CONCEAL PROPERTY FROM TRUSTEE.**

District Court of the United States of America,

for the ..... District of .....

At a Stated Term of the District Court of the United States of America for the ..... District of ....., begun and held in the City of ....., within and for the District aforesaid, on the ..... of ..... in the year of our Lord one thousand nine hundred and ..... and continued by adjournment to and including the ..... day of ..... in the year of our Lord one thousand nine hundred and .....

..... District of ....., ss.: The Grand Jurors of the United States of America within and for the District aforesaid, on their oath present that ....., ....., and ..... with other persons to the jurors unknown, late of the City of ....., County of ....., in the District aforesaid, Yeomen heretofore, to wit, on the ..... day of ....., in the year of our Lord one thousand nine hundred and ....., at the ..... District of ....., and within the jurisdiction of this Court, did unlawfully and wilfully conspire to commit an offence against the United States, in and by corruptly and fraudulently agreeing together, in

anticipation of the involuntary bankruptcy of the . . . . ., a domestic corporation, to be brought about and accomplished by the said . . . . ., with the knowledge and connivance of the said other conspirators, to conceal from the trustee in bankruptcy of the said corporation, to be thereafter appointed, certain property, hereinafter to be mentioned, belonging to the estate in bankruptcy of the said . . . . ., it being then and there a part of said scheme and conspiracy for the said . . . . ., who was President and General Manager of the business, and owner of a majority of the stock of said corporation, with the knowledge and connivance of the said other conspirators, to cause the said corporation to commit acts of bankruptcy, with a view to force the filing of a petition in bankruptcy against the said corporation in the District Court of the United States in and for the . . . . . district of . . . . .: it being then and there, with the knowledge and connivance of the said other conspirators, also a part of the said conspiracy for the said . . . . ., as President, General Manager and principal stockholder of said corporation as aforesaid to make no opposition to the involuntary bankruptcy aforesaid, and to consent, without answer, to an adjudication of bankruptcy against the said corporation; and after the formation and arrangement of the said conspiracy, on the . . . . . day of . . . . . in the year of our Lord nineteen hundred and . . . . ., a petition in involuntary bankruptcy against the said corporation was filed in the said court by . . . . . and . . . . ., creditors, who had provable claims against the said alleged bankrupt, aggregating . . . . . dollars and . . . . . cents: and among other things in said petition alleged the insolvency of the said corporation and that with intent to hinder, delay and defraud its creditors, the said . . . . . had transferred, removed and concealed property of the said company, of the value of . . . . . dollars: all in violation of the bankruptcy laws of the United States. And upon the filing of the said petition a subpoena was duly issued by the said court, directed to the said alleged bankrupt, requiring a personal appearance before the said court to answer said petition: and, on the same day, . . . . . attorney of the alleged bankrupt, of the choosing of the said . . . . ., President, Manager and stockholder of said corporation as aforesaid, consented in writing to the entry of an order appointing a receiver of the property of the said alleged bankrupt: and on the same day, at the instance of the said . . . . ., as such President and Manager of the said corporation, the said attorney filed in the said court a notice of appearance as attorney of the said alleged bankrupt.

And on the . . . . . day of . . . . ., 19. ., at the instance of the said . . . . ., President and Manager as aforesaid, in default of an answer, the said . . . . ., was declared and adjudged a bankrupt by Honorable . . . . ., Judge of the said District Court, having lawful authority thereto.

And at a meeting of the creditors of the said bankrupt, held on the . . . . . day of . . . . . of the same year, . . . . ., was elected and



appointed trustee of the estate of the said bankrupt, and (duly) qualified as such on the same day.

And to effect the object of the said conspiracy, the said....., on the said ..... day of ..... in the year last aforesaid, caused and procured the removal and concealment of ..... the property of the said corporation, which said removal was then and there accomplished under the direction of said ....., an employee of the said corporation; ..... then and there being so removed from the premises of the said corporation at Number ..... Street, in said City, to ..... in the said City and said County; and on the same day the said ..... at the instance of the said ....., as aforesaid, caused and procured the removal from the premises of the said corporation as aforesaid the said ....., and their conveyance thence to .....; and the said ....., at the instance of the said ....., (who signed the schedules of the property of said bankrupt in behalf of said corporation by the name of....., Prest.,) were withheld and omitted by him from said schedules, which were filed in said court on the ..... day of ..... in the said year: and the oath to said schedules was taken by the said ....., as President as aforesaid, on the ..... day of ..... in the year last aforesaid, before ....., Comm. of Deeds, ....., and the said property was never turned over to the said trustee, but was concealed from him by the procurement of the said ....., with the knowledge, consent and connivance of the said other conspirators.

And so the Grand Jurors aforesaid, on their oaths aforesaid, do say, that ....., ....., ....., ....., and the said divers other persons to the Grand Jurors unknown in manner and form and by the means aforesaid, on the ..... day of ....., in the year of our Lord nineteen hundred and ....., within the jurisdiction aforesaid and continuously thereafter, did unlawfully and wilfully conspire to commit an offence against the United States in and by the concealment from the trustee in bankruptcy, property belonging to the estate in bankruptcy of the....., a domestic corporation, while a bankrupt; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided.

A true bill.

.....,  
*Foreman.*

.....,  
*U. S. Attorney.*

[From United States v. Cohn et al., sustained in 142 Fed. 983 and 157 Fed. 651.]  
[Statute may be cited at end of text.]



**FORM No. 357.****INDICTMENT FOR PERJURY IN BANKRUPTCY PROCEEDING.**

District Court of the United States of America,  
for the ..... District of .....

At a Stated Term of District Court of  
the United States of America, for the  
..... District of ..... begun  
and held at ..... within and for  
said district on the .... day of .....,  
in the year of our Lord, one thousand nine  
hundred and .....

..... District of ....., ss.:

The Grand Jurors of the United States of America within and for the  
..... District of ....., upon their oath, present that .....,  
of ....., in said district, was at the several times hereinafter men-  
tioned, a citizen of the State of ....., and of the United States and  
resided at ....., within the jurisdiction of this Court.

That in voluntary bankruptcy proceedings in the District Court of the  
United States for the ..... District of ....., the said  
..... was on the ..... day of ....., 19.., duly adju-  
dicated a bankrupt and the proceeding duly referred to .....,  
Esq., one of the referees in bankruptcy for said ..... District of  
.....

That on the ..... day of ....., 19.., and on the ..... day  
of ....., 19.., in said bankruptcy proceeding, the said .....  
was ordered and directed by the said referee in bankruptcy to testify and give  
evidence in said proceeding on behalf of and at the instance of .....,  
his trustee in bankruptcy, duly appointed and qualified. That thereupon the  
said ..... was duly sworn in said proceeding by said referee having  
lawful authority thereto, to testify and depose truly.

That the said ..... then and there, on the dates aforesaid  
falsely, corruptly and wilfully and contrary to his said oath, testified as  
follows:

[Here insert substance of testimony with exactness, giving folios and pages  
of minutes of testimony.]

That the said testimony, as above set forth, was false in the following  
particulars: .....  
.....  
.....

That the said ..... well knew at the time of giving said testi-  
mony that the same was false in material matters and he did not then believe

it to be true but it was given with the corrupt purpose on his part of concealing the real truth in the premises.

That thereafter on the .... day of ....., 19.., the ..... did read over, sign and swear to said minutes of testimony as transcribed in the presence of the said referee in bankruptcy in said proceeding.

And so the Grand Jurors aforesaid, upon their oaths aforesaid, do say and present that ....., as aforesaid in the State and District of ....., and in the manner and form aforesaid, did, on the ..... day of ....., A. D. 19.., having taken an oath before a competent tribunal aforesaid, in a case wherein a law of the said United States authorized an oath to be administered, that he would truly depose and testify, wilfully and contrary to his said oath, did depose and state material matters which he did not then believe to be true and which were false and thereby did commit wilful and corrupt perjury against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

.....,  
*United States Attorney.*

A true bill.

.....,

*Foreman.*

#### NOTES.

##### **Indictment for concealment of assets and conspiracy.**

U. S. R. S. 5440; Crim. Code, Sec. 37; Bankruptcy Act, 29-b.

United States v. Comstock et al. (C. C. R. I.), 20 Am. B. R. 520; 161 Fed. 644.

Cohn v. United States (C. C. A. 2d Cir.), 19 Am. B. R. 8; 157 Fed. 651; 85 C. C. A. 113; aff'g 15 Am. B. R. 357; 142 Fed. 983.

A corporation may be guilty of concealment of assets while a bankrupt.

United States v. Young & Holland Co. (C. C. R. I.), 22 Am. B. R. 484; 170 Fed. 110.

United States v. Freed (C. C. N. Y.), 25 Am. B. R. 89; 179 Fed. 236.

United States v. Rosenstein, 33 Am. B. R. 730; 211 Fed. 738.

##### **When defective.**

The omission of the words "knowingly and fraudulently" or an equivalent therefor from an indictment charging conspiracy to conceal assets from trustee of bankrupt estate in violation of Sec. 29-b, is fatal on demurrer.

United States v. Comstock et al. (C. C. R. I.), 20 Am. B. R. 525; 162 Fed. 415. Also s. c. 20 Am. B. R. 520; 161 Fed. 644.

McNiel v. United States (C. C. A. 5th Cir.), 18 Am. B. R. 18; 150 Fed. 82; 80 C. C. A. 36.

Because persons charged were not officers or connected with the bankrupt.

United States v. Waldman (D. C. N. Y.), 26 Am. B. R. 677; 188 Fed. 524.

Indictment for conspiracy under Sec. 37, Crim. Code.

Application of Statute of Limitations.

Rabinowitz et al. v. United States (C. C. A. 2d Cir.), 34 Am. B. R. 130; 222 Fed. 846; 138 C. C. A. 272; United States v. Grodson (D. C. Ill.), 21 Am. B. R. 68; 164 Fed. 157.

The mode of alleged concealment of property from trustee is immaterial and need not be set forth in the indictment.

United States v. Comstock, 20 Am. B. R. 520; 161 Fed. 644.

**Continuance of concealment.**

United States v. Stern et al., 26 Am. B. R. 110; 186 Fed. 854; aff'd, 193 Fed. 888; 114 C. C. A. 102.

**Barred by Statute of Limitations.**

Warren v. United States (C. C. A. 5th Cir.), 29 Am. B. R. 555; 199 Fed. 753; 118 C. C. A. 191.

United States v. Phillips, 27 Am. B. R. 625; 196 Fed. 574.

An indictment under Sec. 29-b need not charge that the defendant bankrupt at the time of the alleged concealment of property knew that a trustee had been appointed or the name of the trustee.

United States v. Comstock, 20 Am. B. R. 520; 161 Fed. 644.

Who may be indicted for conspiracy to conceal assets.

United States v. Rhodes, 32 Am. B. R. 523; 212 Fed. 513.

Indictment of president of bankrupt corporation for aiding and abetting bankrupt in concealing property from trustee as principal under Sec. 29-b sustained.

Compare Kauffman v. United States (C. C. A. 2d Cir.), 32 Am. B. R. 22; 212 Fed. 613; 129 C. C. A. 149.

Does not extend to officer of a bankrupt corporation. Statute strictly construed.

Field v. United States (C. C. A. 8th Cir.), 14 Am. B. R. 507; 137 Fed. 6; 69 C. C. A. 568.

A conviction of a bankrupt for concealing property from his trustee cannot be sustained without an adjudication.

Gilbertson v. United States (C. C. A. 7th Cir.), 22 Am. B. R. 32; 168 Fed. 672; 94 C. C. A. 158.

Indictment for concealment of property; territorial jurisdiction. Gretsich v. United States (C. C. A. 3d Cir.), 36 Am. B. R. 571.

In an indictment against a bankrupt and others for conspiracy to conceal assets from his trustee in bankruptcy, an averment that a person is and was "duly" appointed trustee is sufficient, the manner of the appointment being an incidental matter only and not a vital element of the crime.

Kerrch v. United States (C. C. A. 1st Cir.), 22 Am. B. R. 544; 171 Fed. 366; 96 C. C. A. 258.

Nor for failure to allege that a trustee was actually appointed in view of certain other allegations relating to the conspiracy.

Radin et al. v. United States (C. C. A. 2d Cir.), 25 Am. B. R. 640; 189 Fed. 568; 111 C. C. A. 6.

Compare Cohn v. United States (*supra*).

An indictment based upon illegal use of a bankrupt's schedules against him will be dismissed.

United States v. Chambers (C. C. N. Y.), 13 Am. B. R. 708; 135 Fed. 1023.

Cohen v. United States (C. C. A. 4th Cir.), 22 Am. B. R. 333; 170 Fed. 715; 96 C. C. A. 35.

Johnson v. United States (C. C. A. 1st Cir.), 20 Am. B. R. 724; 163 Fed. 30; 89 C. C. A. 508.

Johnson v. United States (C. C. A. 5th Cir.), 158 Fed. 69; 85 C. C. A. 399.

Alkon v. United States (C. C. A. 1st Cir.), 22 Am. B. R. 489; 163 Fed. 810; 90 C. C. A. 116.

Use of testimony given in bankruptcy proceedings.

Cameron v. United States (U. S. Sup.), 31 Am. B. R. 604; 231 U. S. 710; 58 L. Ed. 448; rev'g 27 Am. B. R. 657.

**Indictment for perjury.**

U. S. R. S., 5392, 5396, Crim. Code, Sec. 125.

An indictment for perjury may be predicated upon false testimony given by a witness before a special commissioner appointed under Sec. 21-a prior to bankrupt's adjudication.

United States v. Liberman, 23 Am. B. R. 734; 176 Fed. 161.

Sufficiency.

Kovoloff v. United States (C. C. A. 7th Cir.), 28 Am. B. R. 767; 202 Fed. 475; 120 C. C. A. 605.

Daniels v. United States (C. C. A. 6th Cir.), 27 Am. B. R. 790; 196 Fed. 459; 116 C. C. A. 233.

Oath must be authorized or required by law to render statute applicable.

United States v. George, 228 U. S. 14; 57 L. Ed. 712.

Perjury and false swearing.

Kohn v. United States (C. C. A. 2d Cir.), 214 Fed. 54; 130 C. C. A. 494.

When indictment charging perjury under U. S. R. S. 5392 defective.

United States v. Lake (D. C. Ark.), 12 Am. B. R. 270; 129 Fed. 499.

Bartlett v. United States (C. C. A. 9th Cir.), 5 Am. B. R. 678; 106 Fed. 884; 46 C. C. A. 19.

United States v. Brod, 23 Am. B. R. 740; 176 Fed. 165.

When it fails to show that the alleged false testimony was material to the issue involved.

United States v. Rhodes, 32 Am. B. R. 528; 212 Fed. 518, and cases cited.

Conspiracy to give false oath.

United States v. Waldman (D. C. N. Y.), 26 Am. B. R. 677; 188 Fed. 524.

Immunity clause of Sec. 7 (9) of Act no bar to prosecution for perjury.

Glickstein v. United States (U. S. Sup.), 27 Am. B. R. 786; 222 U. S. 139; 56 L. Ed. 128.

Daniels v. United States (C. C. A. 6th Cir.), 27 Am. B. R. 790; 196 Fed. 459; 116 C. C. A. 233.

Edelstein v. United States (C. C. A. 8th Cir.), 17 Am. B. R. 649; 149 Fed. 636; 79 C. C. A. 328; certiorari denied, 205 U. S. 543; 51 L. Ed. 922.

The taking of bankrupt's books by the receiver and their use before the grand jury in procuring the indictment does not infringe defendant's constitutional rights.

United States v. Halstead (Ct. of App. Dist. of Col.), 27 Am. B. R. 302.

Nor a violation of the Fifth Amendment to the Constitution that no person shall be compelled in a criminal case to be a witness against himself. s. c. (*supra*).

Compare Counselman v. Hitchcock, 142 U. S. 547; 35 L. Ed. 1110.

Matter of Harris, 26 Am. B. R. 302; 221 U. S. 274, 279; 55 L. Ed. 732.

Kerrch v. United States (C. C. A. 1st Cir.), 22 Am. B. R. 544; 171 Fed. 366; 96 C. C. A. 258.

See Johnson v. United States (C. C. A. 1st Cir.), 20 Am. B. R. 724; 163 Fed. 30; 89 C. C. A. 508.

Use of bankrupt's books in prosecuting for concealment of assets, admissible.

Johnson v. United States (U. S. Sup.), 30 Am. B. R. 14; 228 U. S. 457; 57 L. Ed. 919, and footnote of cases.

Subornation of perjury in bankruptcy proceedings covered by Sec. 5393, R. S. (Sec. 126, Penal Code.)

Epstein v. United States (C. C. A. 7th Cir.), 196 Fed. 355; 116 C. C. A. 174.

In prosecution in State court under indictment charging defendants as bankers with having violated State statute, in having received deposits as private bankers while insolvent, the schedules in bankruptcy and expert accountant's testimony held admissible.

Ensign v. Commonwealth of Penn. (U. S. Sup.), 30 Am. B. R. 408; 227 U. S. 592; 57 L. Ed. 658.

[See, Joyce on Indictments. Atwell, "Federal Criminal Law."]



## PART XV.

### APPEALS, PETITIONS TO REVIEW, WRITS OF ERROR, CERTIORARI AND CERTIFICATES.

- FORM No. 358. Petition for Appeal to Circuit Court of Appeals from Order Denying a Discharge and Order allowing Same.
359. Citation on Appeal.
360. Assignment of Errors.
361. Bond on Appeal.
362. Notice of Filing of Bond on Appeal.
363. Stipulation as to Record on Appeal.
364. Praecipe.
365. Stipulation as to Praecipe.
366. Stipulation as to the Record.
367. Order Filing Record.
368. Certification by Clerk of Record on Appeal.
369. Appearance of Counsel.
370. Order Amending Record on Appeal.
371. Order Amending Printed Record and Directing Printing as a Part of Original Record.
372. Petition to Restore Appeal to Calendar.
373. Order for Mandate.
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375. Order on Mandate.
376. Decree in District Court after Mandate of Reversal in Equity Suit.
377. Petition to Review under Section 24-b.
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381. Petition for Appeal from a Circuit Court of Appeals to the Supreme Court of the United States.
382. Order Allowing Appeal from a Circuit Court of Appeals to the Supreme Court of the United States.
383. Petition for Writ of Error from the Supreme Court to a Circuit Court of Appeals.
384. Writ of Error from the Supreme Court of the United States to a Circuit Court of Appeals.
385. Petition for a Writ of Certiorari from the Supreme Court to a Circuit Court of Appeals.
386. Notice of Application to the Supreme Court for Writ of Certiorari.
387. Motion for Writ of Certiorari from the Supreme Court to a Circuit Court of Appeals.
388. Writ of Certiorari from the Supreme Court to a Circuit Court of Appeals.
389. Certificate of Question of Jurisdiction by District Court to Supreme Court.
390. Certificate of Question of Law in a Bankruptcy Proceeding by a Circuit Court of Appeals to the Supreme Court.



FORM No. 358.

PETITION FOR APPEAL TO CIRCUIT COURT OF APPEALS FROM  
ORDER DENYING A DISCHARGE AND ORDER ALLOWING SAME.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER  
OF  
.....  
*Bankrupt.*

To the Honorable ....., District Judge of the United States  
District Court for the ..... District of .....

The above named bankrupt (your petitioner) conceiving himself aggrieved  
by the final order and decree entered on the .... day of ....., 19...  
in the above entitled proceeding, dismissing the petition and application for  
discharge, and denying the said bankrupt a discharge in bankruptcy from his  
debts, does hereby petition for an appeal from the said order and decree to the  
United States Circuit Court of Appeals for the ..... Circuit, and  
prays that his appeal may be allowed and a citation granted, directed to.....  
..... and ..... objecting  
creditors, commanding them and each of them to appear before the United  
States Circuit Court of Appeals for the ..... Circuit, to do and  
receive what may appertain to justice to be done in the premises, and that a  
transcript of the record, proceedings and evidence in said proceeding, duly  
authenticated, may be transmitted to the United States Circuit Court of  
Appeals for the ..... Circuit.

.....,  
*Bankrupt.*

.....,  
*Solicitor for Bankrupt.*

The foregoing appeal is hereby allowed.

Dated ....., 19...

.....,  
*D. J.*

NOTES.

Appeals under Sec. 24-a.

“Controversies Arising in Bankruptcy Proceedings.”

Smith v. Means (C. C. A. 7th Cir.), 17 Am. B. R. 433; 148 Fed. 89; 78 C. C. A. 10.

*Hinds v. Moore* (C. C. A. 6th Cir.), 14 Am. B. R. 1; 134 Fed. 221; 67 C. C. A. 149.  
*Doroshov v. Ott* (C. C. A. 3d Cir.), 14 Am. B. R. 34; 134 Fed. 740; 67 C. C. A. 644.  
*Hutchinson v. Otis*, 10 Am. B. R. 135; 190 U. S. 552; 47 L. Ed. 1179.

*Burleigh v. Forman* (C. C. A. 1st Cir.), 11 Am. B. R. 74; 125 Fed. 217; 60 C. C. A. 109; *In re First Nat. Bank of Canton* (C. C. A. 6th Cir.), 14 Am. B. R. 180; 135 Fed. 62; 67 C. C. A. 536.

*Liddon & Bro. v. Smith* (C. C. A. 5th Cir.), 14 Am. B. R. 204; 135 Fed. 43; 67 C. C. A. 517.

*Delta Nat. Bank v. Easterbrook* (C. C. A. 5th Cir.), 13 Am. B. R. 338; 133 Fed. 521; 67 C. C. A. 236; writ of certiorari denied, 200 U. S. 620; 50 L. Ed. 624.

*Mason v. Wolkowich* (C. C. A. 1st Cir.), 17 Am. B. R. 709; 150 Fed. 699; 80 C. C. A. 435.

*McCarty v. Coffin* (C. C. A. 5th Cir.), 18 Am. B. R. 148; 150 Fed. 307; 80 C. C. A. 195; *Security Warehousing Co. v. Hand*, 19 Am. B. R. 291; 206 U. S. 415; 51 L. Ed. 1117; aff'g 16 Am. B. R. 49; 143 Fed. 32.

*In re Doran* (C. C. A. 6th Cir.), 18 Am. B. R. 760; 154 Fed. 467; 83 C. C. A. 265.  
 A proceeding to compel a purchaser from a receiver to carry out his contract.

*In re J. Jungman, Inc.* (C. C. A. 2d Cir.), 26 Am. B. R. 401; 186 Fed. 302; 108 C. C. A. 380.

Order in so-called "Omnibus proceeding" directing the distribution of proceeds of sale among claimants is a final order within statute.

*In re Leavitt & Grant* (C. C. A. 2d Cir.), 33 Am. B. R. 62; 215 Fed. 898; 132 C. C. A. 238.

Review of judgment determining priorities of mortgages and mechanics' liens.

*The New Hampshire Savings Bank & ano. v. Varner & ano.* (C. C. A. 8th Cir.), 33 Am. B. R. 1; 216 Fed. 721; 132 C. C. A. 631.

*Century Savings Bank v. Robert Moody & Son et al.* (Matter of Hartzel) (C. C. A. 8th Cir.), 31 Am. B. R. 586; 209 Fed. 775; 126 C. C. A. 499.

Contest over distribution of fund in hands of trustee.

*Globe Bank & Trust Co. v. Martin* (U. S. Sup.), 34 Am. B. R. 162; 236 U. S. 288; 59 L. Ed. 583; aff'g 29 Am. B. R. 935; 201 Fed. 31; 119 C. C. A. 363.

Order dismissing petition to recover property from trustee.

*Constad & Newman v. Buell* (In re Gold) (C. C. A. 7th Cir.), 31 Am. B. R. 18; 210 Fed. 410; 127 C. C. A. 142.

Plenary suit to recover funds from bankrupt's wife.

*Kirkpatrick v. Harnesberger* (C. C. A. 5th Cir.), 29 Am. B. R. 439; 199 Fed. 886; 118 C. C. A. 334.

When conditional vendor intervenes in bankruptcy proceeding, asserting title and asking possession of goods, it is a controversy arising under 24-a of Act, and is appealable.

General Order XXXVI does not apply.

*Baker Ice Machine Co. v. Bailey, Trustee* (C. C. A. 8th Cir.), 31 Am. B. R. 513; 209 Fed. 844; 126 C. C. A. 568.

See *Hewitt v. Berlin Machine Works*, 11 Am. B. R. 709; 194 U. S. 296; 48 L. Ed. 986.

*Knapp v. Milwaukee Trust Co.*, 30 Sup. Ct. Rep. 412; 216 U. S. 545; 54 L. Ed. 610.

*Houghton v. Burden*, 30 Am. B. R. 16; 228 U. S. 161; 57 L. Ed. 780.

An order removing bankruptcy proceeding from one district to another reviewable only by appeal.

*Kyle Lumber Co. v. Bush* (C. C. A. 5th Cir.), 13 Am. B. R. 535; 133 Fed. 688; 66 C. C. A. 592.

A decree summarily adjudicating the right to property in the possession of a trustee as between him and adverse claimants.

Mound Mines Co. v. Hawthorn (C. C. A. 8th Cir.), 23 Am. B. R. 242; 173 Fed. 882; 97 C. C. A. 394.

Order directing sale of property free and clear of liens and determining claims thereto appealable under this section.

Thomas v. Woods (C. C. A. 8th Cir.), 23 Am. B. R. 132; 173 Fed. 585; 97 C. C. A. 535.

Order of District Court directing an attorney to account and pay over may be properly reviewed by appeal.

Haffenberg v. Chicago Title & Trust Co. (In re Raphael) (C. C. A. 7th Cir.), 27 Am. B. R. 708; 192 Fed. 874; 113 C. C. A. 198.

Louisville Trust Co. v. Cominger (U. S. Sup.), 7 Am. B. R. 421; 184 U. S. 18; 46 L. Ed. 413.

Reclamation proceedings—when case will be considered as on appeal. Nauman Co. v. Bradshaw (C. C. A. 8th Cir.), 27 Am. B. R. 565; 193 Fed. 350; 113 C. C. A. 274.

Review of judgment in plenary suit to recover a preference is by appeal.

In re Hamilton Automobile Co. (C. C. A. 7th Cir.), 29 Am. B. R. 163; 196 Fed. 856; 117 C. C. A. 135.

Order declaring trust deed not a lien.

Rison v. Parham (C. C. A. 4th Cir.), 33 Am. B. R. 571; 219 Fed. 176; 134 C. C. A. 550.

#### **Appeals as in equity cases. Sec. 25 (a).**

##### **General Order XXXVI, (1).**

(1) from a judgment adjudging or refusing to adjudge the defendant a bankrupt.

(2) from a judgment granting or denying a discharge.

(3) from a judgment allowing or rejecting a debt or claim of five hundred dollars or over.

#### **Jurisdiction.**

As to these three classes of judgments, jurisdiction by appeal exclusive.

Cook Inlet Coal Fields Co. v. Caldwell (C. C. A. 4th Cir.), 17 Am. B. R. 135; 147 Fed. 475; 78 C. C. A. 17.

Davidson & Co. v. Friedman (C. C. A. 6th Cir.), 15 Am. B. R. 489; 140 Fed. 853; 72 C. C. A. 553.

In re Kuffler (C. C. A. 2d Cir.), 11 Am. B. R. 469; 127 Fed. 125; 61 C. C. A. 259.

First National Bank of Miles City v. State National Bank (C. C. A. 9th Cir.), 12 Am. B. R. 440; 131 Fed. 430; 65 C. C. A. 406.

In re Good (C. C. A. 8th Cir.), 3 Am. B. R. 605; 99 Fed. 389; 39 C. C. A. 581.

#### **(1) Appeals from judgments granting or refusing adjudication.**

Taft Co. v. Century Savings Bank (C. C. A. 8th Cir.), 15 Am. B. R. 594; 141 Fed. 369; 72 C. C. A. 671.

Zugalla v. Mercantile Agency (C. C. A. 3d Cir.), 16 Am. B. R. 67; 142 Fed. 927; 74 C. C. A. 97.

Cook Inlet Coal Fields Co. v. Caldwell (*supra*).

Compare In re Neasmith (C. C. A. 6th Cir.), 17 Am. B. R. 128; 147 Fed. 160; 77 C. C. A. 402.

An order refusing to vacate and set aside an adjudication in bankruptcy is not appealable under Sec. 25-a.

B-R Electric etc. Co. v. Aetna Life Ins. Co. (C. C. A. 8th Cir.), 30 Am. B. R. 424; 206 Fed. 885; 124 C. C. A. 545.

An order dismissing an involuntary petition is a decree refusing to adjudicate a bankrupt and is appealable.

O'Brien v. Ely (C. C. A. 5th Cir.), 28 Am. B. R. 247; 195 Fed. 64; 115 C. C. A. 80.

*Stevens v. Nave-McCord Mercantile Co.* (C. C. A. 8th Cir.), 17 Am. B. R. 609; 150 Fed. 71; 80 C. C. A. 25.

**(2) Judgment granting or denying a discharge.**

An order of the District Court confirming the conclusions of and adopting "as the opinion, conclusions and judgment of the Court," the report of the special master, recommending that specifications of objection to discharge be overruled and dismissed, is not an order granting or refusing a discharge, and an appeal therefrom will not lie to Circuit Court of Appeals.

*Ragan, Malone & Co. v. Cotton & Preston* (C. C. A. 5th Cir.), 28 Am. B. R. 246; 195 Fed. 69; 115 C. C. A. 576.

*Walter Scott & Co. v. Wilson* (C. C. A. 7th Cir.), 8 Am. B. R. 349; 115 Fed. 284; 53 C. C. A. 76.

A judgment confirming or rejecting a composition is a judgment granting or refusing a discharge and is therefore reviewable by appeal.

*In re Friend* (C. C. A. 7th Cir.), 13 Am. B. R. 595; 134 Fed. 778; 67 C. C. A. 500.

*In re Bay State Milling Co.* (C. C. A. 2d Cir.), 35 Am. B. R. 112; 223 Fed. 778; 139 C. C. A. 598.

*United States ex rel. Adler v. Hammond* (C. C. A. 6th Cir.), 4 Am. B. R. 736; 104 Fed. 862; 44 C. C. A. 229; *Ross v. Saunders* (C. C. A. 1st Cir.), 5 Am. B. R. 350; 105 Fed. 915; 45 C. C. A. 123.

Where referee passed upon only one of a number of objections filed to the discharge of a bankrupt which he sustained, and his report was confirmed by District Court an appeal from the order denying the discharge brings such objection only before the appellate court.

*Vehon v. Ullman* (C. C. A. 7th Cir.), 17 Am. B. R. 435; 147 Fed. 694; 78 C. C. A. 82.

Order dismissing an application for discharge for want of prosecution appealable under this section.

*In re Kuffler* (C. C. A. 2d Cir.), 11 Am. B. R. 469; 127 Fed. 125; 61 C. C. A. 259;

*In re Semons* (C. C. A. 2d Cir.), 15 Am. B. R. 822; 140 Fed. 989; 72 C. C. A. 683.

**(3) Judgments allowing or rejecting debt or claim of \$500 or over.**

*In re Dickson* (C. C. A. 1st Cir.), 7 Am. B. R. 186; 111 Fed. 726; 49 C. C. A. 574.

*In re Groetzinger* (C. C. A. 3d Cir.), 11 Am. B. R. 467; 127 Fed. 124; 62 C. C. A. 124.

*Postlethwaite, Trustee, etc. v. Hicks* (C. C. A. 4th Cir.), 21 Am. B. R. 70; 165 Fed. 897; 91 C. C. A. 575.

*In re Mueller, Trustee, etc.* (C. C. A. 6th Cir.), 14 Am. B. R. 256; 135 Fed. 711; 68 C. C. A. 349.

*Gray v. Grand Forks Mercantile Co. et al.*, 14 Am. B. R. 780; 138 Fed. 344; 70 C. C. A. 634.

Limited to money demand.

*In re Whitener* (C. C. A. 5th Cir.), 5 Am. B. R. 198; 105 Fed. 180; 44 C. C. A. 434.

Includes an order fixing amount due on a secured claim.

*In re Roche* (C. C. A. 5th Cir.), 4 Am. B. R. 369; 101 Fed. 956; 42 C. C. A. 115.

*Adams v. Deckers Valley Lumber Co.* (C. C. A. 4th Cir.), 29 Am. B. R. 42; 202 Fed. 48; 120 C. C. A. 302.

*In re Loving* (U. S. Sup.), 27 Am. B. R. 852; 224 U. S. 183; 56 L. Ed. 725.

Review of judgment disallowing claim of \$500 or over as a secured claim.

*Grainger & Co. v. Riley* (C. C. A. 6th Cir.), 29 Am. B. R. 114; 201 Fed. 901; 120 C. C. A. 415.

*Bell v. Arledge* (C. C. A. 5th Cir.), 27 Am. B. R. 773; 192 Fed. 837; 113 C. C. A. 161.

*Kiskadden v. Steinle* (C. C. A. 6th Cir.), 29 Am. B. R. 346; 203 Fed. 375; 121 C. C. A. 559.



From judgment rejecting claim governed by rules in equity appeals, except as to the time within which same are to be taken, and the citation and bond are not jurisdictional requisites.

In re Quality Shop (C. C. A. 7th Cir.), 29 Am. B. R. 854; 202 Fed. 196; 120 C. C. A. 410.

In re T. E. Hill Co. (C. C. A. 7th Cir.), 17 Am. B. R. 517; 148 Fed. 832; 78 C. C. A. 522.

Review of order disallowing claim to a mechanic's lien is under 25-a.

In re Streator Metal Stamping Co. (C. C. A. 7th Cir.), 30 Am. B. R. 55; 205 Fed. 280; 123 C. C. A. 444.

A ruling made in the course of a trial as to the issues on a contested bankruptcy proceeding as to whether or not the petitioning creditors held "provable" claims, is not a judgment allowing or rejecting a debt or claim within the meaning of Sec. 25-a. Nor is the decision of the Court of Appeals upon such a ruling a "final" decision under 25-b.

J. W. Calnan Co. v. Doherty (U. S. Sup.), 27 Am. B. R. 880; 224 U. S. 145; 56 L. Ed. 702.

Duryea Power Co. v. Sternbergh, 25 Am. B. R. 66; 218 U. S. 299, 300; 54 L. Ed. 1047.

#### What not appealable.

An appeal will not lie under this section from an order sustaining a demurrer to a petition to vacate an adjudication.

In re Ives (C. C. A. 6th Cir.), 7 Am. B. R. 692; 113 Fed. 911; 51 C. C. A. 541; aff'g 111 Fed. 495.

Nor from an order requiring a trustee to account for rental value of property, which the trustee allowed bankrupt to use without compensation.

Bank of Clinton v. Kondert, 20 Am. B. R. 178; 159 Fed. 703; 86 C. C. A. 571.

A decree rendered upon a petition asserting a lien on the proceeds of a sale of a stock exchange seat, not appealable within subdivision 3 of 25-a.

Hutchinson v. Otis (*supra*).

An order refusing to vacate an adjudication in bankruptcy not appealable, but reviewable under Sec. 24-b, as an administrative order.

Brady v. Bernard & Kittinger (C. C. A. 6th Cir.), 22 Am. B. R. 342; 170 Fed. 576; 95 C. C. A. 656.

An order directing the turning over of property or money by a third person to a trustee, not reviewable by appeal.

In re Rose Shoe Mfg. Co. (C. C. A. 2d Cir.), 21 Am. B. R. 725; 168 Fed. 39; 93 C. C. A. 461.

A claim for attorney's fees and expenses incurred in administration of estate, or by creditors in contesting claims, not appealable.

Ohio Valley Bank Co. v. Switzer (C. C. A. 6th Cir.), 18 Am. B. R. 689; 153 Fed. 362; 82 C. C. A. 438.

See, Pratt v. Bothe (C. C. A. 6th Cir.), 12 Am. B. R. 529; 130 Fed. 670; 65 C. C. A. 48.

Nor from an order adjudging appellant a member of a partnership, which has been adjudged a bankrupt.

Francis v. McNeal (C. C. A. 3d Cir.), 22 Am. B. R. 337; 170 Fed. 445; 95 C. C. A. 168.

An order dismissing a petition for revocation of a discharge, not appealable.

Thompson v. Mauzy (C. C. A. 4th Cir.), 23 Am. B. R. 489; 174 Fed. 611; 98 C. C. A. 457.

An interlocutory order of referee, not appealable.

Goodman v. Brenner, 6 Am. B. R. 470; 109 Fed. 481; 48 C. C. A. 516.



**Discretionary order.**

Order rejecting charges against a receiver for expenses incurred looking to the care or preservation of the bankrupt estate is discretionary and no appeal lies therefrom under the Bankruptcy Act.

O'Brien v. Ely (C. C. A. 5th Cir.), 28 Am. B. R. 247; 195 Fed. 64; 115 C. C. A. 80.

**Facts and law are reviewable on appeal.**

Whole case open to review.

Merchants' Nat. Bank, etc. v. Cole, Adm. (C. C. A. 6th Cir.), 18 Am. B. P. 44; 149 Fed. 708; 79 C. C. A. 414.

Ross v. Stroh (C. C. A. 3d Cir.), 21 Am. B. R. 644; 165 Fed. 628; 91 C. C. A. 616. Appellate court will not interfere with findings of fact unless clearly erroneous.

In re Noyes Bros. (C. C. A. 1st Cir.), 11 Am. B. R. 506; 127 Fed. 286; 62 C. C. A. 218.

In re Lawrence (C. C. A. 2d Cir.), 13 Am. B. R. 798; 134 Fed. 843; 67 C. C. A. 617.

Dodge v. Norlin (C. C. A. 8th Cir.), 13 Am. B. R. 176; 133 Fed. 363; 66 C. C. A. 425.

Coder v. Arts (C. C. A. 8th Cir.), 18 Am. B. R. 513; 152 Fed. 943; 82 C. C. A. 91.

But if judgment is entered on the verdict of a jury, it is conclusive as to facts.

Elliott v. Toepfner, 9 Am. B. R. 50; 187 U. S. 327; 47 L. Ed. 200; Bower v. Holzworth (C. C. A. 8th Cir.), 15 Am. B. R. 22; 138 Fed. 28; 70 C. C. A. 396.

Houghton v. Burden (U. S. Sup.), 30 Am. B. R. 16; 228 U. S. 161; 57 L. Ed. 780.

Duryea Power Co. v. Sternbergh (U. S. Sup.), 25 Am. B. R. 66; 218 U. S. 299; 54 L. Ed. 1047.

Right of appeal absolute, and can neither be enlarged nor restricted by District or Appellate Court.

In re Whitener (C. C. A. 5th Cir.), 5 Am. B. R. 198; 105 Fed. 180; 44 C. C. A. 434.

Lockman v. Lang (C. C. A. 8th Cir.), 12 Am. B. R. 497, 501; 132 Fed. 1; 65 C. C. A. 621.

Even though question of jurisdiction was raised.

Columbia Iron Works v. Nat. Lead Co. (C. C. A. 6th Cir.), 11 Am. B. R. 340; 127 Fed. 99; 62 C. C. A. 99.

First Nat. Bank of Denver v. Klug, 8 Am. B. R. 12; 186 U. S. 202; 46 L. Ed. 1127;

**Parties.**

Must be taken by party aggrieved.

All parties aggrieved by final order or judgment may join in an appeal, although upon different grounds.

Stevens v. Nave-McCord Mercantile Co. (*supra*).

Crim v. Woodford (C. C. A. 4th Cir.), 14 Am. B. R. 302; 136 Fed. 34; 68 C. C. A. 584.

Where creditors, as a whole, are aggrieved, trustee should appeal as their representative.

Foreman v. Burleigh (C. C. A. 1st Cir.), 6 Am. B. R. 230; 109 Fed. 313; 48 C. C. A. 376.

If trustee neglects or refuses, court may direct that he so appeal, or may permit creditor to do so.

Ohio Valley Bank Co. v. Mack et al. (C. C. A. 6th Cir.), 20 Am. B. R. 40; 163 Fed. 155; 89 C. C. A. 605; McDaniel v. Stroud (C. C. A. 4th Cir.), 5 Am. B. R. 685; 106 Fed. 486; 45 C. C. A. 446; Foreman v. Burleigh (*supra*).

**Time of taking appeal.**

Fixed at ten days for appeals taken under Sec. 25-a.

When District Court may grant reargument.

In re Wright, 3 Am. B. R. 184; 96 Fed. 820; s. c. on appeal sub nom., In re Worcester Co. (C. C. A. 1st Cir.), 4 Am. B. R. 496; 102 Fed. 808; 42 C. C. A. 637. In re McCall (C. C. A. 6th Cir.), 16 Am. B. R. 670; 145 Fed. 898; 76 C. C. A. 430.

Postlethwaite v. Hicks (C. C. A. 4th Cir.), 21 Am. B. R. 70; 165 Fed. 897; 91 C. C. A. 575. In re Billing, 17 Am. B. R. 80; 145 Fed. 395.

See, Mills v. J. H. Fisher & Co. (C. C. A. 6th Cir.), 20 Am. B. R. 237; 159 Fed. 897; 87 C. C. A. 77.

Rehearing for purpose of reviving right of appeal, not allowed.

In re Girard Glazed Kid Co., 12 Am. B. R. 295; 129 Fed. 841. In re Hudson Clothing Co., 15 Am. B. R. 254; 140 Fed. 49.

Rode and Horn v. Phipps (C. C. A. 6th Cir.), 27 Am. B. R. 827; 195 Fed. 414; 115 C. C. A. 316.

Conboy v. First Nat. Bank of N. J. (U. S. Sup.), 16 Am. B. R. 773; 203 U. S. 141; 51 L. Ed. 128.

Morgan v. Benedum (C. C. A. 4th Cir.), 19 Am. B. R. 601; 157 Fed. 232; 84 C. C. A. 675.

West v. W. A. McLaughlin & Co.'s Trustee (C. C. A. 6th Cir.), 20 Am. B. R. 654; 162 Fed. 124; 89 C. C. A. 124.

Nor by subsequent entry of an alias adjudication.

In re Berkebile (C. C. A. 2d Cir.), 16 Am. B. R. 277; 144 Fed. 577; 75 C. C. A. 333.

Time begins to run from actual entry of order or judgment.

In re McCall (C. C. A. 6th Cir.) (*supra*).

While appeal is pending District Court has no jurisdiction to act upon a petition for a rehearing.

First Nat. Bank of Miles City v. State Nat. Bank, 12 Am. B. R. 440; 131 Fed. 430; 65 C. C. A. 406.

Limitation does not affect appeals in independent suits to recover assets.

Boonville, etc. v. Blakey (C. C. A. 7th Cir.), 6 Am. B. R. 13; 107 Fed. 891; 47 C. C. A. 43.

Steele v. Buel (C. C. A. 8th Cir.), 5 Am. B. R. 165; 104 Fed. 968; 44 C. C. A. 287.

Stelling v. Jones Lumber Co. (C. C. A. 7th Cir.), 8 Am. B. R. 521; 116 Fed. 261; 53 C. C. A. 81.

May not be extended.

Rhame v. Southern Cotton Oil Co., 35 Am. B. R. 732.

### Practice on appeals.

Conforms to other appeals in equity to Circuit Court of Appeals.

In re Robertshaw Mfg. Co., 14 Am. B. R. 341; 135 Fed. 220.

Instituted by petition, assignment of errors and a citation to opposite party.

Lockman v. Lang (C. C. A. 8th Cir.), 11 Am. B. R. 597; 128 Fed. 279; 62 C. C. A. 550; s. c. 12 Am. B. R. 497; 132 Fed. 1; 65 C. C. A. 621.

No appeal allowed until an assignment of errors, which shall set out separately and particularly each error asserted and intended to be urged, shall have been filed in rule in Circuit Court of Appeals.

Appeal may be allowed either by judge in lower court or of Court of Appeals.

Sufficiency of record.

Herman Keck Mfg. Co. v. Lorsch et al. (C. C. A. 6th Cir.), 24 Am. B. R. 705; 184 Fed. 987; 106 C. C. A. 665.

Shaffer v. The Koblegard Co. (C. C. A. 4th Cir.), 24 Am. B. R. 898; 183 Fed. 71; 105 C. C. A. 363; aff'g In re Shaffer, 22 Am. B. R. 147; 169 Fed. 724.

An appeal cannot be taken to Circuit Court of Appeals *in forma pauperis* in Sixth Circuit.

Herman Keck Mfg. Co. v. Lorsch et al. (*supra*).

In re Bradford's Petition, 139 Fed. 518.

Questions raised for first time on appeal, not to be considered.

Arctic Ice Machine Co. v. Armstrong County Trust Co. (C. C. A. 3d Cir.), 27 Am. B. R. 562; 192 Fed. 114; 112 C. C. A. 458.

Position of intervening creditors. Cooney v. Dandridge (In re Dandridge & ano.) (C. C. A. 7th Cir.), 31 Am. B. R. 15; 209 Fed. 838; 126 C. C. A. 562.

**Practice on Appeals to Circuit Court of Appeals.**

By exception of Sec. 7, Act of March 3, 1891, providing for an appeal to Circuit Court of Appeals from an interlocutory decree, granting or continuing an injunction or appointing a receiver, the appellate court is authorized to review the whole of the interlocutory decree, not merely the part granting the injunction and also to determine whether there was any insuperable objection in point of jurisdiction or merits to the maintenance of the suit, and if so, to direct a final decree dismissing the bill.

United States Fidelity and G. Co. v. Bray (U. S. Sup.), 28 Am. B. R. 207; 225 U. S. 205; 56 L. Ed. 1055.

What order held interlocutory and not appealable to Circuit Court of Appeals.

In re Strauss (C. C. A. 2d Cir.), 32 Am. B. R. 237; 211 Fed. 123; 127 C. C. A. 521.

Supervision fee on appeal to Circuit Court of Appeals abolished by Act of Feb. 13, 1911.

In re Burr Mfg. Co. (C. C. A. 2d Cir.), 33 Am. B. R. 61; 215 Fed. 898; 132 C. C. A. 238.

Rainey v. W. R. Grace & Co., 231 U. S. 703; 58 L. Ed. 445.

Limit to relief granted.

Spencer v. Lowe (C. C. A. 8th Cir.), 29 Am. B. R. 876; 198 Fed. 961; 117 C. C. A. 497.

In appeals taken generally under Court of Appeals Act, findings of fact and conclusions of law not necessary.

In re Martin (C. C. A. 6th Cir.), 29 Am. B. R. 935; 201 Fed. 31; 119 C. C. A. 363.

**Motion to dismiss appeal.**

In re Alden Electric Co. (C. C. A. 7th Cir.), 10 Am. B. R. 370; 123 Fed. 415; 59 C. C. A. 509.

Failure to incorporate any evidence in record, not ground for dismissal where it does not appear from the record that any evidence was taken.

C. C. Taft Co. v. Century Saving Bank (C. C. A. 8th Cir.), 15 Am. B. R. 594; 141 Fed. 369; 72 C. C. A. 671.

Reversal and dismissal by stipulation.

In re Donnelly (C. C. A. 6th Cir.), 32 Am. B. R. 232; 211 Fed. 118; 128 C. C. A. 20.

**FORM No. 359.**

**CITATION ON APPEAL.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

IN THE MATTER  OF  .....  <i>Bankrupt.</i>	}	No.....
--	---	---------

United States of America, ss.:  
The President of the United States to .....,  
Greeting:

You and each of you are hereby cited and admonished to appear in the United States Circuit Court of Appeals for the ..... Circuit, in the City of ....., on the ..... day of ....., 19..., pursuant to the appeal duly obtained and filed in the Clerk's Office of the District Court of the United States for the ..... District of ....., wherein you as objecting creditors are appellees and ....., bankrupt, is the appellant, to show cause, if any there be, why the order and decree in said appeal mentioned, should not be reversed and corrected, and why speedy justice should not be done to the parties in that behalf, and to do and receive that may appertain to justice to be done in the premises.

Witness, the Honorable ....., United States Judge for the ..... District of ....., on the ..... day of ....., in the year of our Lord one thousand nine hundred and .....  

J.

NOTES.

**Citation.**  
U. S. R. S., Secs. 998, 999.  
Jacobs v. George, 150 U. S. 415; 37 L. Ed. 1127.

**May be waived in some cases.**  
Lockman v. Lang (C. C. A. 8th Cir.), 11 Am. B. R. 597; 128 Fed. 279; 62 C. C. A. 559.  
In re Hill Co. (C. C. A. 7th Cir.), 17 Am. B. R. 517; 148 Fed. 832; 78 C. C. A. 522.  
In re Quality Shop (C. C. A. 7th Cir.), 29 Am. B. R. 854; 202 Fed. 196; 120 C. C. R. 410.



Defects in, may be cured.

Gray v. Grand Forks, etc., Mercantile Co. (C. C. A. 8th Cir.), 14 Am. B. R. 780; 138 Fed. 344; 70 C. C. A. 634.

Columbia Iron Works v. Nat. Lead Co. (C. C. A. 6th Cir.), 11 Am. B. R. 340; 127 Fed. 99; 62 C. C. A. 99.

FORM No. 360.

ASSIGNMENT OF ERRORS.

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	No. ....
---	---	----------

Now comes ....., bankrupt and complainant, and files the following assignment of errors on appeal from order of this Court dated.....:

First. That the United States District Court for the ..... District of ..... erred in finding that the bankrupt failed to apply timely for a discharge in the earlier involuntary proceeding instituted against him.

Second. That the Court erred in finding that such alleged failure to apply for a discharge in the earlier proceeding rendered the question of the right of the bankrupt to a discharge herein from his debts then scheduled, *res adjudicata*.

Third. That the Court erred in denying a discharge herein to the said bankrupt.

Fourth. That the Court erred in failing to find that the bankrupt should be granted a discharge from his debts unless and except he has committed an offense or performed one of the acts specified and set forth in Section 14 of the United States Bankruptcy Act, and the amendments thereto, and that the Court is not authorized to extend the provisions of that section and refuse a discharge upon any other grounds than those therein set forth.

Wherefore, he prays that said order may be reversed and his discharge granted.

.....,  
By.....  
.....,  
*Solicitor for Bankrupt.*



NOTES.

**Assignment of errors.**

Not jurisdictional. Lockman v. Lang et al. (*infra*).

On appeal should be specific; but amendment may be permitted.

Flickinger v. First Nat. Bank of Vandalia (C. C. A. 6th Cir.), 16 Am. B. R. 678; 145 Fed. 162; 76 C. C. A. 132.

Failure to file under Rule XV of C. C. A.

Bernard, Trustee v. Lea (C. C. A. 4th Cir.), 31 Am. B. R. 436; 210 Fed. 583; 127 C. C. A. 219.

Filing considered.

Lockman v. Lang et al., 12 Am. B. R. 497; 132 Fed. 1.

And, also, s. c. 11 Am. B. R. 597; 128 Fed. 279; 62 C. C. A. 550.

Errors not specifically assigned, need not be considered by appellate court.

Boonville Nat. Bank, etc. v. Blakey, 6 Am. B. R. 13; 107 Fed. 891; 47 C. C. A. 43.

In re Gutterson, 14 Am. B. R. 495; 136 Fed. 698.

Under some circumstances an assignment of errors is amendable.

Flickinger v. First Nat. Bank of Vandalia (*supra*).

Long v. Farmers' State Bank (C. C. A. 8th Cir.), 17 Am. B. R. 103; 147 Fed. 360; 77 C. C. A. 538.

---

**FORM No. 361.**

**BOND ON APPEAL.**

District Court of the United States,

..... District of .....

IN THE MATTER

OF

No.....

.....  
*Bankrupt.*

Know all men by these presents:

That we, ..... as principal, and ....., as surety are held and firmly bound unto the above named ....., ..... of ....., in the sum of ..... for the payment of which well and truly to be made we bind ourselves, our and each of our heirs, representatives, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this ..... day of ....., 19...

Whereas, the above named ..... has prosecuted or is about to prosecute an appeal to the United States Circuit Court of Appeals for the

..... Circuit to reverse the final decree (or order) in the above entitled proceeding entered in the office of the clerk of the United States District Court for the ..... District of ....., on the ... day of ....., 19...

Now, therefore, the condition of this obligation is such that if the above named ..... shall prosecute his appeal to effect, and answer all damages and costs if he fails to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.  
Signed, Sealed and Delivered  
in the presence of

..... L. S.  
.....  
By .....  
Manager.  
Attest: .....  
Attorney-in-fact.

Approved,  
.....  
U. S. District Judge.

NOTES.

**Bond on appeal.**

Bond must, on perfection of appeal, be filed and approved.

Williams Bros. v. Savage (C. C. A. 4th Cir.), 9 Am. B. R. 720; 120 Fed. 497; 56 C. C. A. 647.

Dodge v. Knowles, 114 U. S. 430; 29 L. Ed. 144.

Lockman v. Lang et al., 12 Am. B. R. 497; 132 Fed. 1. In re Barton's Estate, 16 Am. B. R. 569; 144 Fed. 540.

When trustee need not file (Sec. 25, c).

When appeal is allowed within time limit, it will not be dismissed because of a few days' delay in filing the bond.

Columbia Iron Works v. Nat. Lead Co. (C. C. A. 6th Cir.), 11 Am. B. R. 340; 127 Fed. 99; 62 C. C. A. 99. In re T. E. Hill Co., 17 Am. B. R. 517; 148 Fed. 832; 78 C. C. A. 522. In re Quality Shop (C. C. A. 7th Cir.), 29 Am. B. R. 854; 202 Fed. 196 120 C. C. A. 410.

Bond on appeal from order of adjudication held sufficient, although it does not run to all the petitioning creditors.

Flickinger v. First Nat. Bank (C. C. A. 6th Cir.), 16 Am. B. R. 678; 145 Fed. 162; 76 C. C. A. 132.

Without a *supersedeas*, appeal does not suspend the execution of an order or stop its enforcement.

In re Brady, 21 Am. B. R. 364; 169 Fed. 152.

**FORM No. 362.**

**NOTICE OF FILING OF BOND ON APPEAL.**

United States District Court,  
for the ..... District of .....:  
In Bankruptcy.

<p style="text-align: center;">IN THE MATTER OF</p> <p>..... <i>Bankrupt</i></p>	}	No.....
--	---	---------

SIRS:

Please take notice that the bond for the appeal herein has been this day filed in the office of the clerk of the District Court of the United States, for the ..... district of ..... and executed and given by ..... of ..... and ..... of .....

Yours, etc.,

.....,  
*Attorney for* ..... ,  
(Address.)

To ..... , Esq.,  
*Attorney for* .....

**FORM No. 363.**

**STIPULATION AS TO RECORD ON APPEAL.**

United States Circuit Court of Appeals,  
..... Circuit.

<p>IN THE MATTER</p> <p>OF</p> <p>.....</p> <p><i>Bankrupt.</i></p>
---

Whereas in the above entitled proceeding the bankrupt, ....., did on the .... day of ....., 19.., duly file in the District Court of the United States for the ..... District of ....., a petition for appeal, a citation and assignment of errors, which said appeal was allowed by order of the District Court upon said day (and the time to certify the record having been duly extended,)

Now, therefore, it is hereby stipulated that the record to be certified to this Court by the Clerk of the United States District Court for the ..... District of ....., on said appeal, shall consist of the following:

1. Order of adjudication and Reference.
2. Petition for discharge and order thereon.
3. Referee's Certificate thereon.
4. Notice of objection to discharge.
5. Opinion denying discharge.
6. Petition for appeal.
7. Citation.
8. Assignment of errors.
9. It is agreed and stipulated as follows:

.....

.....

Dated, ....., 19...

.....  
*Attorney for Bankrupt-Appellant.*

.....  
*Attorneys for Creditors-Respondents.*

**FORM No. 364.****PRAECIPE.**

United States District Court,  
 ..... District of .....,

IN THE MATTER  OF  .....  <i>Bankrupt.</i>
--

To the Clerk of the United States District Court,  
 for the ..... District of .....

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for ..... Circuit pursuant to an appeal, allowed in the above entitled proceeding, and to include in such transcript the following:

1. Petition.
2. Answer.
3. Testimony, narrative form.
4. Exhibits.
5. Opinion of Court.
6. Decree, or order.
7. Petition for appeal.
8. Assignment of errors.
9. Citation on appeal.
10. Waiver.
11. Praecipe.

.....,  
*Solicitor for* .....

Service of above praecipe admitted this ..... day of .....,  
 19...

.....,  
*Solicitor for* .....



**FORM No. 365.**

**STIPULATION AS TO PRAECIPE.**

U. S. Circuit Court of Appeals,  
for the ..... Circuit.

....., as Trustee, etc.,	}
<i>Complainant-Appellee,</i>	
against	
..... et al.,	
<i>Defendants-Appellants.</i>	

It is hereby stipulated and agreed that compliance with each and every of the provisions of Rule 15 of the Rules of Practice for the Courts of Equity of the United States, be dispensed with, that neither the appellants nor the appellee shall be required to file a praecipe as set forth in said Rule. That the printing of the bond for costs heretofore duly given and filed by appellants be dispensed with and this stipulation be printed in lieu thereof; that trustee's Exhibits No. .... and ..... be not printed in full, but the abstract thereof as herein printed be printed in place thereof, and that either party may read or refer to same or any part thereof upon the appeal herein.

Dated ....., 19...

.....  
*Solicitor for Complainant-Appellee.*  
.....  
*Solicitor for Defendants-Appellants.*

**FORM No. 366.**

**STIPULATION AS TO THE RECORD.**

U. S. Circuit Court of Appeals,  
for the ..... Circuit:

....., as Trustee, etc., <i>Complainant-Appellee,</i> against ..... et al., <i>Defendants-Appellants.</i>	}
---	---

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of said District Court in the above entitled matter as agreed on by the parties.

Dated ....., 19...

.....,  
*Solicitor for Complainant-Appellee.*  
.....,  
*Solicitor for Defendants-Appellants.*

**FORM No. 367.**

**ORDER FILING RECORD.**

U. S. Circuit Court of Appeals,  
for the ..... Circuit:

....., as Trustee, etc.. <i>Complainant-Appellee,</i> against ..... et al., <i>Defendants-Appellants.</i>	}
---	---

On the above stipulation, dated ....., between the solicitors for all the parties herein, it is hereby

Ordered, that the foregoing printed record be and the same hereby is ordered to be filed in the office of the clerk of this Court, in lieu of the record required by the Rules.

Dated ....., 19...

.....,  
J.

**FORM No. 368.**

**CERTIFICATION BY CLERK OF RECORD ON APPEAL.**

United States of America, } ss.:  
..... District of .....

<p>IN THE MATTER</p> <p>OF</p> <p>.....</p> <p><i>Bankrupt.</i></p>
---

I, ....., Clerk of the District Court of the United States of America for the ..... District of ....., do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above entitled matter as is by stipulation hereto annexed agreed upon by the parties.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the City of ....., in the ..... District of ....., this ..... day of ....., in the year of our Lord one thousand nine hundred and ....., and of the Independence of the said United States the one hundred and .....

.....,  
Clerk.

[Seal.]

NOTES.

Record on appeal consists of all papers in the case as certified by clerk.

**Certification of record.**

See, Rule No. 14, Circuit Court of Appeals.

In re Robertshaw Mfg. Co., 14 Am. B. R. 341; 135 Fed. 220. Cook Inlet Coal Fields Co. v. Caldwell (C. C. A. 4th Cir.), 17 Am. B. R. 135; 147 Fed. 475; 78 C. C. A. 17.

Devries v. Shanahan (C. C. A. 4th Cir.), 10 Am. B. R. 518; 122 Fed. 629; 58 C. C. A. 482.

Certification must be by clerk of District Court.

Cook Inlet Coal Fields Co. v. Caldwell (*supra*).

Record may be reduced by stipulation.

In re Robertshaw Mfg. Co. (*supra*).

Cunningham v. German Ins. Bank (C. C. A. 6th Cir.), 4 Am. B. R. 192; 103 Fed. 932; 43 C. C. A. 377.

Record should show when appeal was perfected.

Williams Bros. v. Savage (C. C. A. 4th Cir.), 9 Am. B. R. 720; 120 Fed. 497; 56 C. C. A. 647.

When record is incomplete it may be stricken out, but remedy is by certiorari.

Flickinger v. First Nat. Bank, 16 Am. B. R. 678; 145 Fed. 162; 76 C. C. A. 132.

Enlargement of time to file transcript.

In re Alden Electric Co. (C. C. A. 7th Cir.), 10 Am. B. R. 370; 123 Fed. 415; 59 C. C. A. 509.

In re National Pressed Brick Co. (C. C. A. 6th Cir.), 32 Am. B. R. 224; 212 Fed. 878; 129 C. C. A. 398.

**FORM No. 369.**

**APPEARANCE OF COUNSEL.**

United States Circuit Court of Appeals,  
for the ..... Circuit:

.....	{	No. ....
.....		Term.
.....		19 .....
VS.		
.....		
.....		
.....		

The clerk will enter my appearance as Counsel for the .....  
.....

[This must be signed by a member of the Bar of this Court. Individual, and  
not firm names, must be signed.]

## FORM No. 370.

## ORDER AMENDING RECORD ON APPEAL.

At a Stated Term of the United States District  
Court for the ..... District of .....,  
held at the United States Court House, in the  
City of ....., on the ..... day of  
....., 19...

Present—Hon. ...., *District Judge.*

IN THE MATTER  
OF

No.....

.....  
*Bankrupt.*

A motion having been made in the above-entitled proceeding for an order amending *nunc pro tunc* the record on appeal herein to the Circuit Court of Appeals of the United States for the ..... Circuit, upon due notice to the creditors-respondents upon said appeal, and said motion having come on to be heard and no one appearing in opposition thereto,

Now, upon reading and filing the petition of ....., verified ....., 19.., and it appearing from said petition that certain papers on file in this court in the matter entitled “ ....., No. ....,” were omitted from said record by inadvertence or mistake,

Now, upon motion of ....., attorney for said bankrupt-appellant, it is

Ordered, that the record on appeal herein to the Circuit Court of Appeals for the ..... Circuit, as certified by the clerk of this court, ....., be and hereby is amended *nunc pro tunc* by adding to said record the referee’s notice of first meeting of creditors in the proceeding of ....., No. ....., dated ....., ....., 19.., on file in this court in said proceeding, and the bankrupt’s petition for discharge in said proceeding, dismissed ....., 19.., with the memorandum of the clerk of this court endorsed thereon, and it is further

Ordered, that the clerk of this court certify said papers to the United States Circuit Court of Appeals for the ..... Circuit as a part of the record on appeal herein.

.....,  
*D. J.*



## FORM No. 371.

**ORDER AMENDING PRINTED RECORD AND DIRECTING PRINTING  
AS A PART OF ORIGINAL RECORD.**

At a Stated Term of the United States Circuit  
Court of Appeals, held in and for the .....  
Circuit, at the United States Court House in  
the City of ....., on the .... day of ...  
....., 19...

Present—Hon. ...., *P. J.*

Hon. ...., *J.*

Hon. ...., *J.*

IN THE MATTER  
OF

.....  
*Bankrupt Appellant.*

Upon the annexed consents of the parties hereto and upon motion of ....  
....., attorney for the appellant, it is

Ordered, that the supplemental return filed herein ....., 19..,  
under order of the United States District Court for the ..... District of  
....., dated ....., 19.., be printed as a part of  
the original record herein.

.....,  
We hereby consent to the entry of the above order,

.....,  
*Attorneys for Creditors-Respondents.*

.....,  
*Attorney for Bankrupt-Appellant.*

## FORM No. 372.

## PETITION TO RESTORE APPEAL TO CALENDAR.

United States Circuit Court of Appeals,  
for the ..... Circuit.

IN THE MATTER

OF

.....  
*Bankrupt Appellant.*

To the Honorable Judges of the United States Circuit Court of Appeals,  
for the ..... Circuit:

The petition of ....., respectfully alleges and shows:

That he is an attorney-at-law, practicing in this court and is attorney for the appellant in this proceeding, and is personally acquainted with all the facts in connection therewith.

That on the .... day of ....., 19.., the bankrupt in this proceeding feeling himself aggrieved by a final order and decree, entered in the District Court for the ..... District of ..... on the .... day of ....., 19.., denying him a discharge from his debts in bankruptcy, appealed to this court and on said day the appeal was duly allowed. That this case was previously upon the calendar of this court, but was dismissed with leave to restore upon the printing of the record herein. That the record is now on file in this court.

No previous application has been made for the order herein prayed for.

Wherefore, your petitioner prays for an order directing the Clerk of this Court to add the appeal herein to the present calendar of this court.

.....,

*Petitioner.*

(Verification.)

**FORM No. 373.**

**ORDER FOR MANDATE.**

At a Stated Term of the United States  
Circuit Court of Appeals, in and for the  
..... Circuit, held at the Court  
Rooms in the ..... Building in the  
City of ....., on the .....,  
day of ....., one thousand  
nine hundred and .....

Present: Hon. ....,  
Hon. ....,  
Hon. ....,  
Hon. ....,  
*Circuit Judges.*

..... the District Court of the United States for the  
..... District of .....,

This cause came on to be heard on the transcript of record from the District  
Court of the United States, for the ..... District of ....., and  
was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed  
that the ..... of said District Court be and it hereby is .....  
.....  
.....

It is further ordered that a mandate issue to the said District Court in  
accordance with this decree.







said court having affirmed (or reversed) the order appealed from with costs taxed at the sum of \$..... and with instructions to this court to enter a decree in conformity with the opinion of said Circuit Court of Appeals and the mandate of the said Circuit Court of Appeals being now before this Court, now on motion of ....., attorney for ....., it is hereby

Ordered and adjudged, that the mandate of the Circuit Court of Appeals for the ..... Circuit, dated ....., 19..., be and the same hereby is made the order and judgment of this Court; and it is hereby

Further ordered, that said order of ..... be and the same is hereby affirmed (reversed or modified) with the costs of said appeal taxed at the sum of ..... dollars (\$.....), and it is hereby

Further ordered and adjudged, that ..... have judgment against said ..... for the sum of ..... dollars, (\$.....) costs on appeal and that he have execution therefor.

*D. J.*

## FORM No. 376.

**DECREE IN DISTRICT COURT AFTER MANDATE OF REVERSAL IN  
EQUITY SUIT.**

At a Stated Term of the United States  
District Court for the .....  
District of ....., held at  
the United States Court House, in the  
....., City of ....., on  
the ..... day of .....,  
19...

Present:

Hon. . . . ., *District Judge.*

....., as Trustee  
in Bankruptcy of.....

Plaintiff,

against

and .....

*Defendants.*

This cause having duly come on to be heard before this court at an Equity Term thereof, held at the United States Court, in the City of .....

on the ..... day of ....., 19..., and the plaintiff having appeared upon the trial by ..... Esq., his counsel, and the defendants, ..... and ....., by ....., Esq., their solicitor and the defendant ....., by ..... Esq., his counsel, and the parties having introduced oral and documentary evidence, and having been argued by counsel and thereupon the court upon consideration thereof having made and filed its decision and a decree which were duly entered in the office of the clerk of this court on ....., 19..., and the defendants having thereafter filed assignments of error in this court and a petition for appeal to the United States Circuit Court of Appeals for the ..... Circuit, which appeal was duly allowed, and a citation having thereupon been issued by the said United States Circuit Court of Appeals to the plaintiff citing him to appear upon said appeal, and due proceedings having been had in the said court upon said appeal wherein the said United States Circuit Court of Appeals made its order dated ....., 19..., ordering that the said decree be reversed and with instructions to this court to enter a decree in conformity with the opinion of said United States Circuit Court of Appeals, and the mandate of said United States Circuit Court of Appeals having been duly filed in this court on ....., 19..., and an order having been made thereon by this court on the ..... day of ....., 19..., making the order of the said United States Circuit Court of Appeals the order of this court, Now, therefore, in conformity with the opinion of the said United States Circuit Court of Appeals, it is

Ordered, adjudged and decreed, etc.  
[Insert substance of decree.]

.....,  
*U. S. D. J.*

**FORM No. 377.**

**PETITION TO REVIEW UNDER SEC. 24-b.**

United States Circuit Court of Appeals,  
for the ..... Circuit of .....:

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><i>Bankrupt.</i></p>	}	Petition to review in Bankruptcy.
---	---	-----------------------------------

To the Honorable Judges of the United States Circuit Court of Appeals, for the ..... Circuit.

1. Your petitioner, ....., appearing by ..... his attorney respectfully represents that he is a citizen of the United States and resides (or has his principal place of business) in the City of ....., State of ....., and claims to be entitled to certain chattels now in the possession of the trustee of the above named bankrupt.

2. That on the ..... day of ....., 19..., the said ..... was duly adjudged a bankrupt by the District Court of the United States for the ..... District of ....., and thereafter ..... was duly appointed trustee in bankruptcy and duly qualified, and is still acting as such trustee.

3. That heretofore your petitioner duly demanded of the said trustee the return to him of the aforesaid chattels, consisting of certain ..... of the value of about \$....., as delivered to said bankrupt under a conditional bill of sale and that the title to said property has always been and still is in your petitioner, and that thereafter an application was made before ..... Esq., one of the referees in bankruptcy in the District Court of the United States, for the ..... District of ..... to compel the return of the said chattels to your petitioner, which application was denied by an order entered the ..... day of ....., 19..., and dismissing said reclamation proceedings together with \$..... costs. A certificate of review was thereafter duly granted to the said District Court for the ..... district of ....., by the said referee, upon the denial of the said application, and that on or about the ..... day of ....., 19..., an order was duly entered by the said District Court, in all respects affirming and approving the order of the said ....., referee. A copy of said order of the District Court is hereto annexed.

That said order was and is erroneous as a matter of law in that:

1. Your petitioner was entitled to the return of the said chattels.

2. That the Statutes of the State of ....., upon which the trustee relied to defeat the claim of your petitioner, had no application to the facts upon which your petitioner based his claim.

3. That the trustee of the bankrupt had no greater rights as against your petitioner than the bankrupt himself.

Wherefore your petitioner feeling aggrieved because of said order, prays that the same may be revised in matter of law, by this Honorable Court, as provided in Section 24-b of the Bankruptcy Act and the rules of practice in such case provided, and that same be reversed, and for such other and further relief as may be just and proper.

Dated ....., 19...

.....,  
*Petitioner.*

[Verification.]

## NOTES.

**What reviewable.**

A summary proceeding against one in possession of assets alleged to belong to bankruptcy estate, is a proceeding in bankruptcy, and the jurisdiction of C. C. A. is confined to revision of the decree (U. S. Sup.).

First Nat. Bank of Chicago v. Chicago Title and Trust Co., 14 Am. B. R. 102; 198 U. S. 280; 49 L. Ed. 1051.

Schweer v. Brown (U. S. Sup.), 12 Am. B. R. 673; 195 U. S. 171; 49 L. Ed. 144. In re Hecox (C. C. A. 8th Cir.), 21 Am. B. R. 314; 164 Fed. 823; 90 C. C. A. 627.

Moore v. Green (C. C. A. 4th Cir.), 16 Am. B. R. 648; 145 Fed. 480; 76 C. C. A. 250. In re McMahon (C. C. A. 6th Cir.), 17 Am. B. R. 530; 147 Fed. 684; 77 C. C. A. 668.

As to dower right.

In re McKenzie (C. C. A. 8th Cir.), 15 Am. B. R. 679; 142 Fed. 383; 73 C. C. A. 483.

A referee's allowance or disallowance of a claim for attorney's fees in contesting claims of others, is reviewable under Sec. 24-b.

Ohio Valley Bank v. Switzer (C. C. A. 6th Cir.), 18 Am. B. R. 689; 153 Fed. 362; 82 C. C. A. 438.

Claims to exemption reviewable by petition under 24-b.

In re Youngstrom (C. C. A. 8th Cir.), 18 Am. B. R. 572; 153 Fed. 98; 82 C. C. A. 232.

Ingram v. Wilson (C. C. A. 8th Cir.), 11 Am. B. R. 192; 125 Fed. 913; 60 C. C. A. 618.

Duncan v. Ferguson-McKinney Co. (C. C. A. 5th Cir.), 18 Am. B. R. 155; 150 Fed. 269; 80 C. C. A. 157.

Order for distribution of proceeds of sale of real estate, reviewable under Sec. 24-b.

In re Groetzinger & Son, 11 Am. B. R. 467; 127 Fed. 124; 62 C. C. A. 124.

Order denying right of partnership creditors to participate in assets of an individual partner reviewable by petition.

Euclid Nat. Bank v. Union Trust Co. (C. C. A. 4th Cir.), 17 Am. B. R. 834; 149 Fed. 975; 79 C. C. A. 485.

Order sustaining demurrer to petition.

In re Ives (C. C. A. 6th Cir.), 7 Am. B. R. 692; 113 Fed. 911; 51 C. C. A. 541.

Order vacating an adjudication.

Brady v. Bernard and Kittinger (C. C. A. 6th Cir.), 22 Am. B. R. 342; 170 Fed. 576; 95 C. C. A. 656.

When order was discretionary, not usually granted except for gross abuse of discretion, or when a substantial legal right has been invaded.

Mulford v. Fourth Street Nat. Bank (C. C. A. 3d Cir.), 19 Am. B. R. 742; 157 Fed. 897; 85 C. C. A. 225.

In re Alden, 30 Am. B. R. 48; 205 Fed. 145; 123 C. C. A. 377.

In re Lesser (C. C. A. 2d Cir.) (*infra*).

In re Carley (C. C. A. 3d Cir.) (*infra*).

Not usually granted where the rights of the petitioning party were not affected by the order complained of.

In re Madden (C. C. A.), 6 Am. B. R. 614; 110 Fed. 348; 49 C. C. A. 83. Fisher v. Cushman (C. C. A. 1st Cir.), 4 Am. B. R. 646; 103 Fed. 860; 43 C. C. A. 381. In re Rosser (C. C. A. 8th Cir.), 4 Am. B. R. 153; 101 Fed. 562; 41 C. C. A. 497.

Petition should be addressed to the judges of appellate court, and after allowance filed with clerk of said court.

An order sustaining objections to a trustee's account, reviewable only upon petition to review under Sec. 24-b.



In re Moore and Bridgeman (C. C. A. 5th Cir.), 21 Am. B. R. 651; 166 Fed. 689; 92 C. C. A. 285.

Order determining validity of claim to a lien upon property of a bankrupt or its proceeds.

In re Lee, 25 Am. B. R. 436; 182 Fed. 579; 105 C. C. A. 117.

Where question as to validity of a chattel mortgage is one of law only, it is properly reviewable under this section.

In re Throckmorton (C. C. A. 6th Cir.), 28 Am. B. R. 487; 196 Fed. 656; 116 C. C. A. 348.

Decision as to validity of bankrupt's trust deed.

Ritchie County Bank et al. v. McFarland (C. C. A. 4th Cir.), 24 Am. B. R. 893; 183 Fed. 715; 106 C. C. A. 153; aff'g (In re Elletson Co.), 23 Am. B. R. 530 174 Fed. 859.

See, Morgan v. First Nat. Bank (C. C. A. 4th Cir.), 16 Am. B. R. 639; 145 Fed. 466; 76 C. C. A. 236.

Any order, judgment or judicial action in a bankruptcy proceeding, except such as are appealable under Sec. 25-a.

Petition to revise brings up questions of law only.

Elliott v. Toepfner, 9 Am. B. R. 50; 187 U. S. 327; 47 L. Ed. 200. In re Blanchard Shingle Co. (Gaudette v. Graham) (C. C. A. 9th Cir.), 21 Am. B. R. 142; 164 Fed. 311; 90 C. C. A. 243. Ross et al. v. Stroh (C. C. A. 3d Cir.), 21 Am. B. R. 644; 165 Fed. 628; 91 C. C. A. 616.

In re Carley (C. C. A. 3d Cir.), 8 Am. B. R. 720; 117 Fed. 130; 55 C. C. A. 146. In re Lesser (C. C. A. 2d Cir.), 3 Am. B. R. 758; 99 Fed. 913; 40 C. C. A. 177.

Mulford v. Fourth St. Nat. Bank (C. C. A. 3d Cir.), 19 Am. B. R. 742; 157 Fed. 897; 85 C. C. A. 225. In re Rosser (C. C. A. 8th Cir.), 4 Am. B. R. 153; 101 Fed. 562; 41 C. C. A. 497.

In re Graessler (C. C. A. 9th Cir.), 18 Am. B. R. 694; 154 Fed. 478; 83 C. C. A. 304.

Kenova Loan & Trust Co. v. Graham (C. C. A. 4th Cir.), 14 Am. B. R. 313; 135 Fed. 717; 68 C. C. A. 355. In re Eggert (C. C. A. 7th Cir.), 4 Am. B. R. 449; 102 Fed. 735; 43 C. C. A. 1.

Dickas v. Barnes (C. C. A. 6th Cir.), 15 Am. B. R. 566; 140 Fed. 849; 72 C. C. A. 261.

Samel v. Dodd (C. C. A. 5th Cir.), 16 Am. B. R. 163; 142 Fed. 68; 73 C. C. A. 254.

Hutchinson v. LeRoy (C. C. A. 1st Cir.), 8 Am. B. R. 20; 113 Fed. 202; 51 C. C. A. 159.

Ryan v. Hendricks (C. C. A. 7th Cir.), 21 Am. B. R. 570; 166 Fed. 94; 92 C. C. A. 78.

Lesaius v. Goodman, 21 Am. B. R. 446; 165 Fed. 889; 91 C. C. A. 567.

Mueller v. Nugent (U. S. Sup.), 7 Am. B. R. 224; 184 U. S. 1; 46 L. Ed. 405.

It has been held in proper cases an appeal may be treated as a petition to revise, when only questions of law are presented.

In re Whitener (C. C. A. 5th Cir.), 5 Am. B. R. 198; 105 Fed. 180; 44 C. C. A. 434. In re Blanchard Shingle Co. (*supra*). Chesapeake Shoe Co. v. Seldner (C. C. A. 4th Cir.), 10 Am. B. R. 466; 122 Fed. 593; 58 C. C. A. 261.

In re Blair (C. C. A. 8th Cir.), 5 Am. B. R. 793; 106 Fed. 662; 45 C. C. A. 530. In re Jacobs (C. C. A. 8th Cir.), 3 Am. B. R. 671; 99 Fed. 539; 39 C. C. A. 647.

When questions of both fact and law are involved, an appeal may not be so treated.

Steiner v. Marshall (C. C. A. 4th Cir.), 15 Am. B. R. 486; 140 Fed. 710; 72 C. C. A. 103.

Order denying application to have adjudication vacated may be so reviewed. Hart-Parr Company v. Barkley & Patton (C. C. A. 8th Cir.), 36 Am. B. R. 540.

A denial of a motion to dismiss a bankrupt's application for discharge on undisputed facts presents a question of law reviewable by petition to revise under Sec. 24-b.

Lindeke v. Converse (C. C. A. 8th Cir.), 28 Am. B. R. 596; 198 Fed. 618; 117 C. C. A. 322.



Erroneous retention of jurisdiction in a "turn over" order.

Shea v. Lewis (C. C. A. 8th Cir.), 30 Am. B. R. 436; 206 Fed. 877; 124 C. C. A. 537.

Validity of a bankruptcy sale.

Schuler v. Hassinger et al. (C. C. A. 5th Cir.), 24 Am. B. R. 184; 177 Fed. 119; 100 C. C. A. 539.

Snow v. Dalton (In re Eagle Furniture Co.) (C. C. A. 4th Cir.), 29 Am. B. 240; 203 Fed. 843; 122 C. C. A. 161.

Order directing bankrupt to deliver property to trustee.

In re Shidlovsky (C. C. A. 2d Cir.), 34 Am. B. R. 861; 224 Fed. 450; 140 C. C. A. 654.

Erroneous exercise of jurisdiction by District Court to determine claim to property.

Gibbons v. Goldsmith (C. C. A. 9th Cir.), 35 Am. B. R. 40; 222 Fed. 826; 138 C. C. A. 252.

Order refusing lien.

Huttig Sash & Door Co. v. Stitt (C. C. A. 5th Cir.), 33 Am. B. R. 251; 218 Fed. 1; 153 C. C. A. 641.

Interlocutory orders affecting administration.

In re Chotiner (C. C. A. 3d Cir.), 33 Am. B. R. 288; 218 Fed. 813; 134 C. C. A. 501; dismissing petition to review, s. c. 32 Am. B. R. 760; 216 Fed. 916.

#### Practice.

When record insufficient to show question of law presented.

Hegner v. American Trust & Savings Bank, 26 Am. B. R. 571; 187 Fed. 599; 109 C. C. A. 429.

Circuit Court of Appeals upon petition to review not accompanied either by a transcript of the record and proceedings had below or findings of fact, will not consider or pass upon the regularity or validity of proceedings of a sale free from liens.

In re Throckmorton (C. C. A. 6th Cir.), 28 Am. B. R. 487; 196 Fed. 656; 116 C. C. A. 348.

In re Taft (C. C. A. 6th Cir.), 13 Am. B. R. 417; 133 Fed. 511; 66 C. C. A. 385.

Where Circuit Court of Appeals reverses an order of the District Court and remands the case without prejudice to such further proceedings as justice may demand, such order cannot be amended by the District Court, as it is annulled by the action of the appellate court.

In re Lesaius (C. C. A. 3d Cir.), 25 Am. B. R. 102; 181 Fed. 690; 104 C. C. A. 588. Findings of fact by master not reviewed.

In re Caponigri (C. C. A. 2d Cir.), 25 Am. B. R. 509; 183 Fed. 307; 105 C. C. A. 519.

Admission of facts by failure to respond to petition.

Rule 39 of C. C. A. Rules.

In re Frank (C. C. A. 8th Cir.), 25 Am. B. R. 486; 182 Fed. 794; 105 C. C. A. 226.

What may be considered.

s. c. (*supra*).

#### Appeals under Sec. 24-a and petition to review under Sec. 24-b.

Either right may be invoked in proper case.

Dodge v. Norlin (C. C. A. 8th Cir.), 13 Am. B. R. 176; 133 Fed. 363; 66 C. C. A. 425. In re Holmes (C. C. A. 8th Cir.), 15 Am. B. R. 689; 142 Fed. 391; 73 C. C. A. 491.

In re McKenzie (C. C. A. 8th Cir.), 15 Am. B. R. 679; 142 Fed. 383; 73 C. C. A. 483. Taft Co. v. Century Savings Bank (C. C. A. 8th Cir.), 15 Am. B. R. 594; 141 Fed. 369; 72 C. C. A. 671. In re Plymouth Cordage Co. (C. C. A. 8th Cir.), 13 Am. B. R. 665; 135 Fed. 1000; 68 C. C. A. 434.

[For discussion of basis of distinction. See Collier on Bankruptcy (10th Ed.), pp. 521-528.]

The distinction between, "controversies arising in bankruptcy proceedings" appealable under Sec. 24-a of the Act and proceedings in bankruptcy reviewable under Sec. 24-b is clearly defined, and the remedies afforded by the two sub-sections are mutually exclusive.

*Barnes v. Pampel* (C. C. A. 6th Cir.), 27 Am. B. R. 192; 192 Fed. 525; 113 C. C. A. 81.

# **Practice.**

Petitions for review are taken in the Circuit Court of Appeals and petition filed there.

Clerk of lower court prepares record at expense of petitioner and certifies to Circuit Court of Appeals such filed papers as may be selected.

*In re Williams* (C. C. A. 1st Cir.), 5 Am. B. R. 365; 105 Fed. 906; 45 C. C. A. 115.  
*Courier Journal Job Print Co. v. Brew. Co.* (C. C. A. 6th Cir.), 4 Am. B. R. 183; 101 Fed. 699; 41 C. C. A. 614.

Party aggrieved may file petition.

*In re Jamison Mercantile Co.* (C. C. A. 5th Cir.), 7 Am. B. R. 588; 112 Fed. 966; 50 C. C. A. 641.

No answer or reply need be filed by respondent.

If finding of fact is not set forth clearly, court may dismiss the petition.

*In re Boston Dry Goods Co.* (C. C. A. 1st Cir.), 11 Am. B. R. 97; 125 Fed. 226; 60 C. C. A. 118.

*Rush v. Lake* (C. C. A. 9th Cir.), 10 Am. B. R. 455; 122 Fed. 561; 58 C. C. A. 447; *rev'g* 111 Fed. 893.

The certified record should show the manner in which the question arose and its determination.

*In re Richards* (C. C. A. 7th Cir.), 3 Am. B. R. 145; 96 Fed. 935; 37 C. C. A. 634. *In re Baker* (C. C. A. 1st Cir.), 4 Am. B. R. 778; 104 Fed. 287; 43 C. C. A. 536. *In re O'Connell* (*infra*).

*Cunningham v. German Ins. Bank*, 4 Am. B. R. 192; 103 Fed. 932; 43 C. C. A. 377.

Opinion of district judge reviewing order of referee and not specifically made a part of record, not a substitute for findings of fact.

*Samel v. Dodd* (C. C. A. 5th Cir.), 16 Am. B. R. 163; 142 Fed. 68; 73 C. C. A. 254.

*In re Pettingill & Co.* (*infra*).

Sufficiency of petition.

*In re Witherbee* (United Wireless Telegraph Co.) (C. C. A. 1st Cir.), 30 Am. B. R. 314; 202 Fed. 896; 121 C. C. A. 254.

Supervision fee abolished.

*In re Burr Mfg. Co.* (C. C. A. 2d Cir.), 33 Am. B. R. 61; 215 Fed. 898; 132 C. C. A. 238.

# **Time within which petition should be filed.**

Not limited by Act or General Orders.

In absence of rule by Circuit Court of Appeals, within a reasonable time.

*In re Good*, 3 Am. B. R. 605; 99 Fed. 389; 39 C. C. A. 581.

*In re N. Y. Economical Printing Co.* (C. C. A. 2d Cir.), 5 Am. B. R. 697; 106 Fed. 839; 49 C. C. A. 133.

*In re Worcester County*, 4 Am. B. R. 496; 102 Fed. 808; 42 C. C. A. 637. *Kenova Loan & Trust Co. v. Graham*, 14 Am. B. R. 313; 135 Fed. 717; 68 C. C. A. 355.

Now usually limited by rule of appellate court.

*Blanchard et al. v. Ammons* (C. C. A. 9th Cir.), 25 Am. B. R. 590; 183 Fed. 556; 106 C. C. A. 102.

Dismissed if not filed within ten days in Second Circuit.

*In re Tanenhaus* (C. C. A. 2d Cir.), 33 Am. B. R. 648; 211 Fed. 971.

Not extended by motion to resettle.

In re John M. Linck Cons. Co., 34 Am. B. R. 860; 225 Fed. 488; 140 C. C. A. 18.

#### Excuses for delay.

In re Groetzinger (C. C. A. 3d Cir.), 11 Am. B. R. 467; 127 Fed. 124; 62 C. C. A. 124; Meyer Drug Co. v. Pipkin Drug Co. (C. C. A. 5th Cir.), 14 Am. B. R. 477; 136 Fed. 396; 69 C. C. A. 240.

Controversies between a trustee and a third party, in respect to property arising in an independent suit, are not reviewable under Sec. 24-b.

The remedy is by appeal.

In re Rusch (C. C. A. 7th Cir.), 8 Am. B. R. 518; 116 Fed. 270; 53 C. C. A. 631. In re Jacobs (C. C. A. 8th Cir.), 3 Am. B. R. 671; 99 Fed. 539; 39 C. C. A. 647. In re Mertens (C. C. A. 2d Cir.), 15 Am. B. R. 701; 142 Fed. 445; 73 C. C. A. 561; aff'd (U. S. Sup.), 205 U. S. 202; 51 L. Ed. 771.

In re Antigo Screen Door Co. (C. C. A. 7th Cir.), 10 Am. B. R. 359; 123 Fed. 249; 59 C. C. A. 248. First Nat. Bank v. Chicago Title & Trust Co. (U. S. Sup.), 14 Am. B. R. 102; 198 U. S. 280; 49 L. Ed. 1051.

In re Mueller (C. C. A. 6th Cir.), 14 Am. B. R. 256; 135 Fed. 711; 68 C. C. A. 349. Holden v. Stratton (U. S. Sup.), 10 Am. B. R. 786; 191 U. S. 115; 48 L. Ed. 116. Hutchinson v. Otis, 10 Am. B. R. 135; 190 U. S. 552; 47 L. Ed. 1179.

*Contra.* In re McMahon (C. C. A. 6th Cir.), 17 Am. B. R. 530; 147 Fed. 684; 77 C. C. A. 668. O'Dell v. Boyden (C. C. A. 6th Cir.), 17 Am. B. R. 751; 150 Fed. 731; 80 C. C. A. 397.

Action on trustee's bond not reviewable under 24-b as a "proceeding in bankruptcy."

United States ex rel. Throckmorton v. Ruggles (C. C. A. 6th Cir.), 34 Am. B. R. 91; 221 Fed. 256; 137 C. C. A. 109.

Where appeal may be brought under Sec. 25-a, a review under Sec. 24-b not available.

Union Nat. Bank v. Neill (C. C. A. 5th Cir.), 17 Am. B. R. 853; 149 Fed. 720; 79 C. C. A. 417. O'Dell v. Boyden (C. C. A. 6th Cir.), 17 Am. B. R. 751; 150 Fed. 731; 80 C. C. A. 397. Mason v. Wolkowich (C. C. A. 1st Cir.), 17 Am. B. R. 709; 150 Fed. 699; 80 C. C. A. 435. In re McMahon (C. C. A. 6th Cir.), 17 Am. B. R. 530; 147 Fed. 684; 77 C. C. A. 668. Davidson & Co. v. Friedman (C. C. A. 6th Cir.), 15 Am. B. R. 489; 140 Fed. 853; 72 C. C. A. 553.

In re Mueller (C. C. A. 6th Cir.), 14 Am. B. R. 256; 135 Fed. 711; 68 C. C. A. 349. In re Kuffler (C. C. A. 2d Cir.), 11 Am. B. R. 469; 127 Fed. 125; 61 C. C. A. 259.

In re Good (C. C. A. 8th Cir.), 3 Am. B. R. 605; 99 Fed. 389; 39 C. C. A. 581; First Nat. Bank of Miles City v. State Nat. Bank (C. C. A. 9th Cir.), 12 Am. B. R. 440; 131 Fed. 430; 65 C. C. A. 406.

Brady v. Bernard & Kittinger (C. C. A. 6th Cir.), 22 Am. B. R. 342; 170 Fed. 576; 95 C. C. A. 656.

See, Stevens et al. v. Nave-McCord Mercantile Co. et al. (C. C. A. 8th Cir.), 17 Am. B. R. 609; 150 Fed. 71; 80 C. C. A. 25.

In re Loving (U. S. Sup.), 27 Am. B. R. 852; 224 U. S. 183; 56 L. Ed. 725.

Morehouse v. Pacific Hardware & Steel Co. (C. C. A. 9th Cir.), 24 Am. B. R. 178; 177 Fed. 337; 100 C. C. A. 647.

Dickas v. Barnes (C. C. A. 6th Cir.), 15 Am. B. R. 566; 140 Fed. 849; 72 C. C. A. 261.

In re Breyer Printing Co. (C. C. A. 7th Cir.), 32 Am. B. R. 796; 216 Fed. 878; 133 C. C. A. 82.

Decision of Circuit Court of Appeals on such review not appealable, but can be transferred to Supreme Court on certiorari.

In re Baker, 4 Am. B. R. 778; 104 Fed. 287; 43 C. C. A. 536.

Conro v. Crane, 94 U. S. 441; 24 L. Ed. 145.

Holden v. Stratton (U. S. Sup.), 10 Am. B. R. 786; 191 U. S. 115; 48 L. Ed. 116.

Nor reviewable on motion to amend order appealed from.

In re Henschel (D. C. N. Y.), 8 Am. B. R. 201; 114 Fed. 968.

#### Jurisdiction.

Supreme Court no jurisdiction under Section 24-b of Act to review an order of the District Court of Porto Rico, determining a member of a bankrupt co-partnership to be a general partner and his personal estate liable for the firm debts.

Munsuri v. Fricker (U. S. Sup.), 27 Am. B. R. 344; 222 U. S. 121; 56 L. Ed. 121.

Circuit Court of Appeals no jurisdiction under this section to control the discretion of a court of bankruptcy in the matter of appointment or removal of referees.

Birch v. Steele (C. C. A. 5th Cir.), 21 Am. B. R. 539; 165 Fed. 577; 91 C. C. A. 415.

#### What petition should show.

In re Richards (C. C. A. 7th Cir.), 3 Am. B. R. 145; 96 Fed. 935; 37 C. C. A. 634.

In re Baker (C. C. A. 4th Cir.), 4 Am. B. R. 778; 104 Fed. 287; 43 C. C. A. 536.

In re O'Connell, 14 Am. B. R. 237; 137 Fed. 838; 70 C. C. A. 336. In re Pettingill & Co., 14 Am. B. R. 757; 137 Fed. 840; 70 C. C. A. 338.

Petition should set forth the questions of law, clearly and specifically, by which petitioner considers himself aggrieved by decision of lower court, and set forth the facts upon which such order was made.

In re Taft (C. C. A. 6th Cir.), 13 Am. B. R. 417; 133 Fed. 511; 66 C. C. A. 385.

Steiner v. Marshall (C. C. A. 4th Cir.), 15 Am. B. R. 486; 140 Fed. 710; 72 C. C. A. 103.

In re Pettingill & Co. (*supra*).

Devries v. Shanahan (C. C. A. 4th Cir.), 10 Am. B. R. 518; 122 Fed. 629; 58 C. C. A. 482.

## FORM No. 378.

## NOTICE OF FILING PETITION TO REVIEW.

United States Circuit Court of Appeals,  
 .....Circuit.

IN THE MATTER OF  ..... <i>Bankrupt.</i>	}
--	---

Sir:

Please take notice that on the .... day of ....., 19.., at .... o'clock, .. M., I shall present to the above-named court at the office of the clerk thereof at the Federal Court House, in the City of ....., and file with the said clerk, the annexed petition of ....., for review by the above-named court of a certain order of the District Court of the United States for the ..... District of ....., and filed in the office of the clerk of that court on the ..... day of ....., 19.., confirming the report of ..... as Special Master, dated the ..... day of ....., 19...

Dated ....., 19...

.....,  
*Attorney and solicitor for,*  
 .....  
 .....  
 .....

To .....,  
*Attorney for* .....



## FORM No. 379.

## NOTICE OF MOTION FOR STAY PENDING REVIEW.

United States District Court,  
 for the ..... District of .....  
 In Bankruptcy.

IN THE MATTER

OF

.....  
*Bankrupt.*

Sir:

Upon all the proceedings had herein and on the petition to review the order and decree entered herein on the ..... day of ....., 19.., directing that (etc.) ....., filed in the clerk's office of the United States Circuit Court of Appeals for the ..... Circuit, on or about ..... .., 19.., I shall move this Court at a session thereof to be held on the ..... day of ....., 19.., at .... A. M. or as soon thereafter as counsel can be heard, for a stay of all proceedings herein on said final order and decree, pending said petition to review; also for such other and further relief as to the court may seem proper.

Dated, ....., .., 19...

.....,  
*Attorney for* .....,  
 (Address.)

To ..... Esq.,  
*Attorney for* .....

**FORM No. 380.****ORDER STAYING PROCEEDINGS PENDING PETITION FOR REVIEW  
UNDER 24-b.**

At a Stated Term of the District Court  
of the United States, in and for the ....  
..... District of ....., at the  
Court House, in the City of .....,  
on the ..... day of .....,  
19...

Present:

Hon. ....,  
*District Judge.*

IN THE MATTER

OF

.....  
*Bankrupt.*

Upon reading and filing the petition of ..... duly verified, the  
petition to review herein, and on motion of ..... attorney for said  
petitioner, and sufficient reason appearing therefor, it is

Ordered, that further proceedings to enforce the order made and entered  
herein dated ..... to ....., be stayed, pending the  
hearing and determination of the petition for review herein, upon the filing  
in this Court by the petitioner of a supersedeas bond, with good and sufficient  
sureties to the satisfaction of the Court in the sum of \$.....

.....,  
*U. S. D. J.*

FORM No. 381.

**PETITION FOR APPEAL FROM A CIRCUIT COURT OF APPEALS TO  
THE SUPREME COURT OF THE UNITED STATES.**

United States Circuit Court of Appeals for the ..... Circuit.

.....and.....	}
.....	
<i>Appellants,</i>	
vs.	
.....and.....	}
.....	
<i>Appellees.</i>	

To the United States Circuit Court of Appeals for the .....  
Circuit:

The above mentioned appellants, ....., respectfully show that the above entitled cause is now pending in the United States Circuit Court of Appeals for the ..... Circuit, and that a judgment has therein been rendered on the ..... day of ....., A. D. ...., affirming the decree of the District Court of the United States for the ..... district of ....., and that the matter in controversy in said suit exceeds two thousand dollars besides costs; that this cause is one in which the United States Circuit Court of Appeals for the ..... Circuit has not final jurisdiction and that it is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

Wherefore, the said appellants pray that an appeal be allowed them in the above entitled cause directing the clerk of the United States Circuit Court of Appeals for the ..... Circuit, to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by the said appellants, may be reviewed, and if error be found, corrected according to the laws and customs of the United States.

.....,  
*Attorney for appellants.*

[Verification.]

NOTES.

**Appeals to Supreme Court.**  
Judiciary Act of March 3, 1891, 26 Stat. at Large 826; Judicial Code, March 3, 1911, ch. 231; 36 Stat. at Large, 1087; Ch. 517, U. S. Compiled Stat. 1901, pp. 488-549.  
Bankruptcy Act. Sec. 25-b.  
General Order XXXVI, (2), (3).

Page 649, insert at bottom of page:  
See Act of Sept. 6, 1916, ch. 448, § 6, and Act of Jan. 28, 1915, restricting appeals to Supreme Court.

**33 Stat. 803, 804, Chap. 22.**

Hewitt v. Berlin Machine Works, 11 Am. B. R. 709; 194 U. S. 296; 48 L. Ed. 986.

In appeals under Sec. 25-b (1), claim in controversy must exceed \$2,000.

Hutchinson v. Otis (C. C. A. 1st Cir.), 10 Am. B. R. 275; 123 Fed. 14; 59 C. C. A. 94.

Western Tie & Timber Co. v. Brown, 13 Am. B. R. 447; 196 U. S. 502; 49 L. Ed. 571.

Lucius v. Cawthorn-Coleman Co., 13 Am. B. R. 696; 196 U. S. 149; 49 L. Ed. 425.

Order allowing an exemption, is not a "final decision allowing or rejecting a claim within the meaning of Sec. 25, subsection b, and appeal does not lie to Supreme Court."

Holden v. Stratton, 10 Am. B. R. 786; 191 U. S. 115; 48 L. Ed. 116. Smalley v. Laugenour, 13 Am. B. R. 692; 196 U. S. 93; 49 L. Ed. 400.

Lucius v. Cawthorn-Coleman Co. (*supra*).

Objections first raised on appeal.

Armstrong v. Fernandez, 19 Am. B. R. 746; 208 U. S. 324; 52 L. Ed. 514.

See rule as laid down in Central Trust Co. of Illinois v. Lueders (U. S. Sup.), 239 U. S. 11; 35 Am. B. R. 730.

**Jurisdiction denied.**

Lazarus et al. v. Prentice, Ancillary Receiver, 32 Am. B. R. 559; 234 U. S. 263; 58 L. Ed. 1305.

Central Trust Co. of Illinois v. Chicago Auditorium Association, 36 Am. B. R. 679; modifying, s. c. 32 Am. B. R. 417.

Matters arising in the administration of the bankrupt estate.

Wynkoop, Hallenbeck, Crawford Co. v. Gaines, 29 Am. B. R. 369; 227 U. S. 4; 57 L. Ed. 391, dismissing appeal from In re Paris Modes Co. (C. C. A. 2d Cir.), 28 Am. B. R. 470; 196 Fed. 357; 116 C. C. A. 177.

From a judgment of the Circuit Court of Appeals affirming a judgment refusing to grant a discharge.

James v. Stone & Co., 29 Am. B. R. 476; 227 U. S. 410; 57 L. Ed. 573.

What cannot be reviewed under Sec. 6 of the Judiciary Act of Mar. 3, 1891.

J. W. Calnan Co. v. Doherty, 27 Am. B. R. 880; 224 U. S. 145; 56 L. Ed. 702.

Tefft, Weller & Co. v. Munsuri, 27 Am. B. R. 338; 222 U. S. 114; 56 L. Ed. 118.

Supreme Court cannot entertain an appeal from a judgment of Circuit Court of Appeals upon a petition to revise under Sec. 24-b of the Act.

Mitchell Store Building Co. v. Carroll, 35 Am. B. R. 197; 232 U. S. 379; 58 L. Ed. 650; dismissing appeal from 27 Am. B. R. 894.

Nor when decree in District Court is an interlocutory order granting a temporary injunction. s. c. (*supra*).

Question whether a case arises under the laws of the United States so as to permit appeal to United States Supreme Court from judgment of Circuit Court of Appeals is determined upon the grounds of jurisdiction set forth in the petition.

Lovell v. Isidore Newman & Son (U. S. Sup.), 29 Am. B. R. 482; 227 U. S. 412; 57 L. Ed. 577.

The right of appeal from a decision of a Circuit Court of Appeals allowing or rejecting a claim is given by Sec. 25-b of the Bankruptcy Act only where the decision is final, whether there is a certificate under Sec. 25-b (2) or not.

Duryea Power Co. v. Sternbergh, 25 Am. B. R. 66; 218 U. S. 299; 54 L. Ed. 1047.

**What appealable.**

A decree dismissing petition of a trustee in bankruptcy to prevent enforcement in a State court of a lien for labor and materials appealable to Supreme Court.

Hobbs v. Head and Doust Co., 31 Am. B. R. 656; 231 U. S. 692; 58 L. Ed. 440; aff'g s. c. 26 Am. B. R. 63; 169 Fed. 586; 95 C. C. A. 84.

An appeal to the Supreme Court from a judgment of the Circuit Court of Appeals may be had in accordance with Sec. 6 of Act of March 3, 1891, in a case relating to the establishment of a mechanic's lien on real estate of the bankrupt involving the requisite amount and concerning a controversy which existed independently of the bankruptcy proceedings. *Hobbs v. Head and Doust Co.* (C. C. A. 1st Cir.), 27 Am. B. R. 484; 191 Fed. 811; 112 C. C. A. 325.

Findings of fact and conclusions of law under General Order in Bankruptcy No. XXXVI (3) will not ordinarily be made unless requested, and one who contemplates an appeal to the Supreme Court, if the conclusion of the Circuit Court of Appeals shall be against him, should make a request for such findings before the decree of the Circuit Court of Appeals is entered.

*Washington v. Tearney* (C. C. A. 4th Cir.), 28 Am. B. R. 633; 197 Fed. 307; 117 C. C. A. 53.

*Compare Knapp v. Milwaukee Trust Co.* (C. C. A. 7th Cir.), 20 Am. B. R. 671; 162 Fed. 675; 89 C. C. A. 467; *aff'd*, see (*infra*.)

*Crucible Steel Co. v. Holt* (C. C. A. 6th Cir.), 23 Am. B. R. 302; 174 Fed. 127; 98 C. C. A. 101.

#### Practice.

*Mueller v. Nugent*, 7 Am. B. R. 224; 184 U. S. 1; 46 L. Ed. 405. *Chapman v. Bowen*, 18 Am. B. R. 844; 207 U. S. 89; 52 L. Ed. 116.

**Time Limit.** *Conboy v. First Nat. Bank of N. J.*, 16 Am. B. R. 773; 203 U. S. 141; 51 L. Ed. 128. *Thomas v. Sugarman*, 30 Sup. Ct. Rep. 650; 218 U. S. 129; 54 L. Ed. 967.

Limitation of 30 days prescribed by General Order XXXVI applies only to appeals taken expressly under the provisions of the Bankruptcy Act.

*Hobbs v. Head & Doust Co.* (C. C. A. 1st Cir.), 27 Am. B. R. 484; 191 Fed. 811; 112 C. C. A. 325.

Under section 6 of Act of March 3, 1891, time is one year.

*United States Fidelity & G. Co. v. Bray*, 28 Am. B. R. 207, 215; 225 U. S. 205; 56 L. Ed. 1055.

An appeal from an order allowing or rejecting a claim of more than \$2,000, separate findings of fact and conclusions of law necessary under General Order XXXVI (3).

*Knapp v. Milwaukee Trust Co.* (C. C. A. 7th Cir.), 20 Am. B. R. 671; 162 Fed. 675; 89 C. C. A. 467; *aff'd*, 24 Am. B. R. 761; 216 U. S. 545; 54 L. Ed. 610.

Where Circuit Court of Appeals fails to make the findings of fact and conclusions of law required by General Order XXXVI (3) the appeal cannot be entertained.

*J. W. Calnan Co. v. Doherty* (*supra*).

Questions passed upon by the court below are open for consideration although not raised in or considered by the trial court.

*Friend v. Talcott*, 30 Am. B. R. 31; 228 U. S. 27; 57 L. Ed. 718.

#### Bond on supersedeas.

Trustee need not give.

*In re Dresser* (Ref. N. Y.), 14 Am. B. R. 41.

It is the practice in the 8th Circuit not to anticipate a further appeal but to await request for findings and conclusions under General Order XXXVI (3) and if the decree has then been entered to vacate it so that the order may be observed.

*Century Savings Bank v. Robert Moody & Son et al.*, 31 Am. B. R. 586; 209 Fed. 775; 126 C. C. A. 499.



**FORM No. 382.**

**ORDER ALLOWING APPEAL FROM A CIRCUIT COURT OF APPEALS  
TO THE SUPREME COURT OF THE UNITED STATES.**

The United States Circuit Court of Appeals,  
for the ..... Circuit:

.....and.....	}
<i>Appellants,</i>	
vs.	
.....and.....	}
<i>Appellees.</i>	

It is hereby ordered that the appeal in the above entitled cause to the Supreme Court of the United States be and is hereby allowed as prayed.

.....,  
*United States Judge.*  
..... *Circuit.*

**FORM No. 383.**

**PETITION FOR WRIT OF ERROR FROM THE SUPREME COURT TO A  
CIRCUIT COURT OF APPEALS.**

The United States Circuit Court of Appeals,  
for the ..... Circuit:

.....	}
Plaintiff in Error,	
vs.	
.....	}
Defendant in Error.	

Now comes, ..... plaintiff in error in the above entitled cause and respectfully shows that the above entitled cause is now pending in the United States Circuit Court of Appeals for .....Circuit, and that a

judgment has therein been rendered on the ..... day of ....., affirming (or reversing) a judgment of the District Court of the United States for the ..... District of ....., and that the matter in controversy in said suit exceeds ..... thousand dollars, besides costs, and that the jurisdiction of none of the courts above mentioned is or was dependent in any wise upon the opposite parties to the suit or controversy being aliens and citizens of the United States, or citizens of the different states, and that this cause does not arise under the patent, revenue or criminal laws, that it is not an admiralty case, and that it is a proper case to be reviewed by the Supreme Court of the United States upon writ of error: and therefore your petitioner would respectfully pray that a writ of error be allowed him in the above entitled cause directing the clerk of the United States Circuit Court of Appeals for the.... Circuit to send the record and proceedings in said cause duly authenticated with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by said plaintiff in error may be reviewed, and if error be found, corrected according to the laws and customs of the United States.

.....,

*Plaintiff in error,*

By .....,

*His attorney.*

The foregoing petition is granted and writ of error allowed as prayed for upon .....’s giving bond according to law in the sum of \$.....

.....,

*Associate Justice of the Supreme Court of  
the United States.*

---

**FORM No. 384.**

**WRIT OF ERROR FROM THE SUPREME COURT OF THE UNITED  
STATES TO A CIRCUIT COURT OF APPEALS.**

United States of America, ss:

The President of the United States to the Honorable, the Judges of the United States Circuit Court of Appeals for the ..... Circuit, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court of Appeals before you, or some of you, between ..... plaintiff in error, and ....., defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be

therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable ....., Chief Justice of the United States, the ..... day of ....., in the year of our Lord one thousand, nine hundred and .....

(Seal of the Supreme Court of the United States.)

.....,

*Clerk of the Supreme Court of the United States.*

Allowed by

.....,

*Associate Justice of the Supreme Court of the United States.*

#### NOTES

Page 654, line 21. insert after figures " 1133 ":

See Act of Jan. 28, 1915, 38 Stat. at L. 803, 804, ch. 22, restricting writs of error to Supreme Court; also Act of Sept. 6, 1916, ch. 448, § 6.

Review of final judgment of highest State court.

Eau Claire Nat. Bank v. Jackman, 17 Am. B. R. 675; 204 U. S. 522; 51 L. Ed. 596.

Frank v. Vollkommer, 17 Am. B. R. 806; 205 U. S. 521; 51 L. Ed. 911.

Rector v. City Deposit Bank Co., 15 Am. B. R. 336; 204 U. S. 522; 51 L. Ed. 576.

Judgment that a person is or is not a bankrupt entered by a court of bankruptcy on a verdict of a jury demanded as of right under Sec. 19, is reviewable in the Supreme Court of the United States only by writ of error.

F. L. Grant Shoe Co. v. W. M. Laird Co., 17 Am. B. R. 1; 203 U. S. 502; 51 L. Ed. 292.

Bower v. Holzworth (C. C. A. 8th Cir.), 15 Am. B. R. 22; 138 Fed. 28; 70 C. C. A. 396.

Elliott v. Toepfner, 9 Am. B. R. 50; 187 U. S. 327; 47 L. Ed. 200.

Lennox v. Allen Lane Co. et al. (C. C. A. 1st Cir.), 21 Am. B. R. 648; 167 Fed. 114; 92 C. C. A. 566. In re Neasmith (C. C. A. 6th Cir.), 17 Am. B. R. 128; 147 Fed. 160; 77 C. C. A. 402. Duncan v. Landis (C. C. A. 3d Cir.), 6 Am. B. R. 649; 106 Fed. 839; 45 C. C. A. 606.

#### How attested.

Long v. Farmers' State Bank (C. C. A. 8th Cir.), 17 Am. B. R. 103; 147 Fed. 360; 77 C. C. A. 538.

Where jury is not demanded under Sec. 19-a it is deemed waived; but judge may submit as in equity, certain issues of fact to a jury in an advisory capacity and from judgment of court in such cases an appeal is held proper method of review.

In re Neasmith (C. C. A. 6th Cir.), 17 Am. B. R. 128; 147 Fed. 160; 77 C. C. A. 402.

Oil Well Supply Co. v. Hall (C. C. A. 4th Cir.), 11 Am. B. R. 738; 128 Fed. 875; 63 C. C. A. 343.

Writ brings up matters of law only.

Elliott v. Toepfner (*supra*).

As to necessity of bill of exceptions.

F. L. Grant Shoe Co. v. W. M. Laird Co. (*supra*).

**Time within which to bring.**

Act of March 3, 1891, Chap. 517, Secs. 6 and 11.

Time within which to bring not limited to 30 days. General Order XXXVI (2) has no application.

F. L. Grant Shoe Co. v. W. M. Laird Co. (*supra*).

**What reviewable.**

Order of District Court adjudging defendant in contempt for disobeying turn over order and imposing fine payable to United States in effect a criminal judgment.

Brown v. Detroit Trust Co. (C. C. A. 6th Cir.), 193 Fed. 622; 113 C. C. A. 490.

Action at law by trustee to recover property alleged to have been transferred in fraud of creditors.

Delta Nat. Bank v. Easterbrook (C. C. A. 5th Cir.), 13 Am. B. R. 338; 133 Fed. 521; 67 C. C. A. 236.

Objection not raised below, not available.

Frank v. Vollkommer (*supra*).

Proceedings in bankruptcy, as a general rule, are proceedings in equity and orders and decrees therein cannot be reviewed by writs of error.

Lockman v. Lang (C. C. A. 8th Cir.), 11 Am. B. R. 597; 128 Fed. 279; 62 C. C. A. 550.

The fact that the ruling of the District Court has been affirmed by the Circuit Court of Appeals on a petition to review will not preclude a writ of error from the Supreme Court to the District Court to review the final decision in the case.

Frederick L. Grant Shoe Co. v. W. M. Laird Co. (U. S. Sup.), 21 Am. B. R. 484; 212 U. S. 445; 53 L. Ed. 591.

**Practice.**

See, 37 U. S. Stat. at L. 54, Chap. 12 and 199 Fed. 115.

Petition with assignment of errors should be filed.

Writ issues in the name of the President of the United States and is tested as of date of issue in name of Chief Justice of the United States. Bears seal of court issuing same, and signed by clerk of that court.

Writ when sent up should be accompanied by a citation signed by judge of court to which writ is addressed, or any judge of the appellate court.

Citation should give names of all applicants for the writ.

Kerch v. United States, 22 Am. B. R. 544; 171 Fed. 365.

Practitioner should consult for additional forms and practice under writs of error, Circuit Court of Appeals to District; United States Supreme Court to Circuit Court of Appeals, District Court or State court.

Foster's, "Federal Practice" (5th Ed., 1913).

Loveland's, "Appellate Jurisdiction" (1911).

Rose's, "Federal Procedure."

**FORM No. 385.****PETITION FOR WRIT OF CERTIORARI TO REMOVE A CAUSE FOR  
REVIEW TO SUPREME COURT.**

In the Supreme Court of the United States,  
..... Term A. D. 19...

.....	}
Petitioner,	
vs.	
.....	}
Respondent.	

Petition for writ of certiorari to the United States Circuit Court of Appeals for the ..... Circuit, requiring it to certify to the Supreme Court of the United States for its revision and determination the petition for review in bankruptcy taken by said petitioner against ..... lately pending in said Court of Appeals.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of ..... filed by virtue of the provisions of Section 25-d of the Bankruptcy Act of 1898 and the amendments thereof respectfully represents as follows:

First. That this cause involves a question of far reaching importance to mercantile and business interests, and upon which the decisions of the circuit courts of appeal in the different circuits are at variance, thus necessitating an authoritative determination thereupon by this court.

Second. The question involved is as follows:

[Recite in full; also proceedings, findings and decision in court below.]

[Recite also grounds upon which judgment of court below should be reversed or modified.]

Your petitioner annexes hereto his brief in support of this petition.

Wherefore, your petitioner prays that a writ of certiorari may be issued out of and under the seal of this court, directed to the United States Circuit Court of Appeals for the ..... Circuit, commanding said court to certify and send to this court, on a day certain to be therein designated, a full and complete transcript of the record in all proceedings in said Circuit Court of Appeals in the case therein, entitled ..... against ..... on petition of ..... for review No. .... to the end that said case may be reviewed and determined by this court, as provided by law; and that



the judgment of the said Circuit Court of Appeals in said case may be reversed by this Honorable Court.

And that petitioner may have such other and further relief as may seem meet and proper.

And your petitioner will ever pray.

.....,  
*Petitioner.*

.....,  
*Attorney for petitioner,*

.....  
[Verification.]

#### NOTES.

Page 657, line 15, insert after "Chap. 22":

Act of Jan. 28, 1915, restricting appeals and writs of error to Supreme Court; see also Act of Sept. 6, 1916, ch. 448, § 6, and Supreme Court Rule No. 37, part 4, as amended June 12, 1916.

*Forsyth v. Hammond*, 166 U. S. 506; 41 L. Ed. 1095.

*First National Bank v. Chicago Title & Trust Co.*, 14 Am. B. R. 102; 198 U. S. 280; 49 L. Ed. 1051; rev'g 11 Am. B. R. 79; 134 Fed. 562; 67 C. C. A. 486.

Application by petition to Supreme Court with printed record of the case; must file certified copy of the entire record in Circuit Court of Appeals. Application must be made within a reasonable time. Return to the writ should be by the clerk under his hand and the seal of the court.

Decided on briefs; oral argument not permitted.

Effect of writ if granted is to remove the question to the Supreme Court.

*American Construction Co. v. Jacksonville, etc.*, 148 U. S. 372; 37 L. Ed. 486.

Cases where writ has been held to lie and been granted.

*In re Watts*, 10 Am. B. R. 113; 190 U. S. 1; 47 L. Ed. 933.

*Holden v. Stratton*, 10 Am. B. R. 786; 191 U. S. 115; 48 L. Ed. 116.

Right to apply for.

*In re Hudson River Electric Co.*, 25 Am. B. R. 873; 184 Fed. 970.

"Judgments and decrees of Circuit Court of Appeals in all proceedings and cases arising under Bankruptcy Act and in all controversies arising in such proceedings and cases shall be *final*, save only that it shall be competent for the Supreme Court to require by certiorari upon the petition of any party thereto that the proceeding, case or controversy be certified to it for review and determination with the same force and authority as if taken to that court by appeal or writ of error; petition to be presented therefor within three months from the date of such judgment or decree."

"Above provision applies to all cases including those involving and requiring interpretation of State statutes and application of the Federal Constitution. Appeal from 221 Fed. 829 dismissed."

*Central Trust Co. of Illinois, Trustee v. Lueders* (U. S. Sup.), 239 U. S. 11; 35 Am. B. R. 730.

[For additional Forms of Practice in Certiorari Proceedings see Loveland, "Appellate Jurisdiction;" Foster's, "Federal Practice," 5th Ed.; Rose's, Code of Civil Procedure.]

**FORM No. 386.****NOTICE OF APPLICATION TO THE SUPREME COURT FOR WRIT OF CERTIORARI.**

United States Circuit Court of Appeals for the ..... Circuit:

.....	}
....,Plaintiff in Error (or Appellant)	
against	
....,Defendant in Error (Appellee)	}

Sir:

Notice is hereby given that the defendant in error (or Appellee) will on Monday, the ..... day of ....., 19..., upon his duly verified petition and a certified copy of the entire record in this cause move before the Supreme Court of the United States in the Courtroom thereof, at the Capitol Building, in the City of Washington, D. C. on the opening of court on that day or as soon thereafter as counsel can be heard, for a writ of certiorari removing this cause to said Supreme Court of the United States and that a copy of said petition and brief in support thereof, are herewith delivered to you.

Dated ..... 19...

.....,  
*Attorney for Defendant in  
 Error (or Appellee).*

To

..... Esq.,  
*Attorney for plaintiff in Error (or Appellant).*

**FORM No. 387.**

**MOTION FOR WRIT OF CERTIORARI FROM THE SUPREME COURT  
TO A CIRCUIT COURT OF APPEALS.**

The Supreme Court of the United States,  
..... Term.

.....	}
Petitioner,	
vs.	
.....	}
Respondent.	

Comes now ....., by ..... Esq., its counsel,  
and moves this Honorable Court that it shall by certiorari or other proper  
process directed to the Honorable, the Judges of the United States Circuit  
Court of Appeals for the ..... Circuit, require said court to certify  
to this court for its review and determination a certain cause in said Court  
of Appeals lately pending, wherein the respondent, ..... was  
plaintiff in error (or appellant) and your petitioner, .....,  
defendant in error, (or appellee,) and to that end it now tenders herewith its  
petition and brief with a certified copy of the entire record in said cause  
in said Circuit Court of Appeals.

.....,  
*Counsel*

## FORM No. 388.

**WRIT OF CERTIORARI FROM THE SUPREME COURT TO A CIRCUIT  
COURT OF APPEALS.**

The United States of America, ss: .....

The President of the United States of America, to the Honorable the Judges  
of the United States Circuit Court of Appeals for the ..... Circuit,  
Greeting:

Being informed that there is now pending before you a suit (or proceeding)  
in which ..... is plaintiff in error (or appellant) and .....  
is defendant in error (or appellee), which suit (or proceeding) was removed  
into the said circuit court of appeals by virtue of writ of error to (or appeal  
from) the district court of the United States for the ..... district of  
..... and we, being willing, for certain reasons, that the said cause  
and the record and proceedings therein should be certified by the said circuit  
court of appeals and removed into the Supreme Court of the United States,  
do hereby command you that you send without delay to the said Supreme  
Court, as aforesaid, the record and proceedings in said cause, so that the said  
Supreme Court may act thereon as of right and according to law ought to be  
done.

[Seal.]

Witness the Honorable ....., Chief  
Justice of the United States, the .....  
day of ....., in the year of our  
Lord one thousand nine hundred and ...

.....,  
*Clerk of the Supreme Court of  
the United States.*

**FORM No. 389.**

**CERTIFICATE OF QUESTION OF JURISDICTION BY DISTRICT COURT  
TO SUPREME COURT.**

District Court of the United States,  
for the ..... District of .....:

<p>IN THE MATTER</p> <p>OF</p> <p>.....</p> <p><i>Bankrupt.</i></p>
---

The District Court of the United States for the ..... District of ..... hereby certifies to the Supreme Court of the United States, that on the ..... day of ....., 19..., a judgment was entered in the above entitled proceeding in accordance with the decision of said court dismissing said proceeding for want of jurisdiction. A copy of the petition, answer and transcript of the proceedings had herein, are contained in the case on appeal herein to which reference is had.

And this court further certifies that in said proceeding the jurisdiction of this court is in issue and further certifies to the Supreme Court said question of jurisdiction as raised by the pleadings herein, namely, to wit: .....

Dated ....., 19...

[Seal.]

.....,  
*United States District Judge.*



## FORM No. 390.

**CERTIFICATE OF QUESTION OF LAW IN A BANKRUPTCY PROCEED-  
ING BY A CIRCUIT COURT OF APPEALS TO THE SUPREME  
COURT.**

The United States Circuit Court of Appeals,  
for the ..... Circuit:

..... <i>Appellants,</i>	}	..... <i>Appellees.</i>
vs.		

The Circuit Court of Appeals for the ..... Circuit hereby certifies to the Supreme Court of the United States that:

This is an appeal from the District Court of the ..... District of ....., sitting as a court of bankruptcy, disallowing a claim filed by the appellants against the bankruptcy estate exceeding five hundred dollars in amount. From the transcript of the record it appears:

First. That the ..... Company is a corporation organized and existing under the laws of the State of ....., and was engaged in business at the City of .....

Second. While insolvent, the said Company, on the ..... day of ....., 19.., made a general assignment for the benefit of creditors, under the general assignment law of the State of ....., by which it conveyed to ..... as assignee, all of its property of every kind, for the equal benefit of all of its creditors. The assignee accepted the trust and duly qualified by executing a bond and taking the oath prescribed by the State Statute, and entered into possession of all the assigned estate. The deed of assignment provided that the assignee should pay "reasonable counsel and attorney's fees for preparing such general assignment and for advice and services to be furnished and rendered him in the course of the administration of the trust hereby created." Within four months after this deed of assignment the ..... Company, upon a petition by three of its creditors, was adjudicated a bankrupt in the District Court of the United States for the ..... district of ..... and the assignment set aside as in contravention of the Bankruptcy Act. A trustee was thereafter duly appointed, who has duly qualified and taken possession of the estate of said bankrupt.

Third. The appellants filed a claim against the bankrupt estate for professional services rendered the bankrupt in preparing the said general assignment for the benefit of creditors, and the assignee thereunder in advising and acting for him in respect to his duties and in defending a suit brought to wind up the corporation in a State Court, and for services rendered the assignee in opposing the adjudication of bankruptcy.

The items of this claim were as follows:

.....  
 .....  
 .....

The appellants asserted and claimed that each of said items constituted a prior charge upon the assets and asked to have same paid by the trustee in preference to the unsecured creditors. The trustee and certain creditors excepted to each item of this account.

The referee upon the evidence, found and certified that the services had been rendered as claimed and were reasonably worth the amount claimed, but that the same did not constitute expenses allowable as a priority payment and were not otherwise a lien. He allowed the item of \$. . . . . as an unsecured claim against the estate, but disallowed the other items as not being debts of the bankrupt. His order was duly excepted to and the questions certified to the court in due form. The District Judge sustained the referee so far as he held the claims to be not entitled to priority and adjudged that none of the items constituted a debt, provable for any purpose against the bankrupt estate. From this judgment the appellants have appealed and assigned error.

Upon this state of facts this court desires the instruction of the Supreme Court, that it may properly decide the questions of law thus arising:

First. Is a claim for professional services rendered to a bankrupt corporation in the preparation of a general assignment, valid under the law of the State of . . . . ., entitled to be paid as a claim entitled to priority out of the estate of the corporation in the hands of a trustee in bankruptcy, when the corporation was adjudicated an involuntary bankrupt within four months after making the assignment, and the assignment set aside as in contravention of the bankrupt law?

Second. Is a claim for professional advice and legal services rendered such an assignee, prior to an adjudication of bankruptcy against the assignor, the assignment providing that the costs and expenses of administering the trust should be first paid, entitled to be proven as a priority claim against the bankrupt estate?

Third. Is a claim against such an assignee for legal services rendered at his employment in resisting an adjudication of involuntary bankruptcy against the assignor, allowable as a priority claim when the necessary effect of the adjudication would be to set aside the assignment under which the assignee was acting?

Fourth. If not entitled to be allowed as priority claims, may either of the items described in the foregoing questions be proven as unsecured debts of the bankrupt corporation?

It is, therefore, ordered that a copy of this certificate, under the seal of the court, be filed with the clerk of the Supreme Court at Washington.

..... ,  
..... ,  
..... ,

Judges of the United States Circuit Court of Appeals for the .....  
Circuit sitting in said cause.

[Certificate of clerk attached.]

NOTES.

**Act of March 3, 1891; 26 Stat. at L. 826. Bankruptcy Act, Sec. 25.**

Randolph v. Scruggs (U. S. Sup.), 10 Am. B. R. 1; 190 U. S. 533; 47 L. Ed. 1165.  
Right to certify.

Power may be exercised by either judges of Circuit Court of Appeals, or district judge.

If from District Court, the question certified must be after final judgment and a question of jurisdiction alone.

Bardes v. First Nat. Bank of Hawarden, 3 Am. B. R. 680; 175 U. S. 526; 44 L. Ed. 261.

First Nat. Bank v. Klug, 8 Am. B. R. 12; 186 U. S. 202; 46 L. Ed. 1127. Columbia Iron Works v. Nat. Lead Co. (C. C. A. 6th Cir.), 11 Am. B. R. 340; 127 Fed. 99; 62 C. C. A. 99.

See, also, Van Wagenen v. Sewall, 160 U. S. 369; 40 L. Ed. 460. Maynard v. Hecht, 151 U. S. 324; 38 L. Ed. 179. McLish v. Roff, 141 U. S. 661; 35 L. Ed. 893.

If from Circuit Court of Appeals, any question on which the court desires instruction may be certified. Such certificate brings up only questions of law. Cross v. Evans, 167 U. S. 60; 42 L. Ed. 77.

Geo. M. West Co. v. Lea Bros. & Co., 2 Am. B. R. 463; 174 U. S. 590; 43 L. Ed. 1098.

Bardes v. First Nat. Bank, etc. (*supra*).

[Ed. Note].

In latter form of certification, no appeal, writ of error or appellate process is required. In this it differs from certification of jurisdictional question by district judge.

# THE BANKRUPTCY ACT OF 1898

## WITH AMENDMENTS OF 1903, 1906 AND 1910.

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AN ACT TO ESTABLISH A UNIFORM SYSTEM OF BANKRUPTCY  
THROUGHOUT THE UNITED STATES.

APPROVED JULY 1, 1898; AMENDMENTS APPROVED FEB. 5, 1903; JUNE 15, 1906  
AND JUNE 25, 1910.

---

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:*

### CHAPTER I.

#### DEFINITIONS.

##### SECTION 1. Meaning of Words and Phrases.

*a.* The words and phrases used in this act and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows: (1) "A person against whom a petition has been filed" shall include a person who has filed a voluntary petition; (2) "adjudication" shall mean the date of the entry of a decree that the defendant, in a bankruptcy proceeding, is a bankrupt, or if such decree is appealed from, then the date when such decree is finally confirmed; (3) "appellate courts" shall include the circuit courts of appeals of the United States, the supreme courts of the Territories, and the Supreme Court of the United States; (4) "bankrupt" shall include a person against whom an involuntary petition or an application to set a composition aside, or to revoke a discharge has been filed, or who has filed a voluntary petition, or who has been adjudged a bankrupt; (5) "clerk" shall mean the clerk of a court of bankruptcy; (6) "corporations" shall mean all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships, and shall include limited or other

EXPLANATION.—Matter in *italics* is amendment of 1910



partnership associations organized under laws making the capital subscribed alone responsible for the debts of the associations; (7) "court" shall mean the court of bankruptcy in which the proceedings are pending, and may include the referee; (8) "courts of bankruptcy" shall include the district courts of the United States and of the Territories, the supreme court of the District of Columbia, and the United States court of the Indian Territory, and of Alaska; (9) "creditor" shall include anyone who owns a demand or claim provable in bankruptcy, and may include his duly authorized agent, attorney, or proxy; (10) "date of bankruptcy," or "time of bankruptcy," or "commencement of proceedings," or "bankruptcy," with reference to time, shall mean the date when the petition was filed; (11) "debt" shall include any debt, demand, or claim provable in bankruptcy; (12) "discharge" shall mean the release of a bankrupt from all of his debts which are provable in bankruptcy, except such as are excepted by this act; (13) "document" shall include any book, deed, or instrument in writing; (14) "holiday" shall include Christmas, the Fourth of July, the Twenty-second of February, and any day appointed by the President of the United States or the Congress of the United States as a holiday or as a day of public fasting or thanksgiving; (15) a person shall be deemed insolvent within the provisions of this act whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay his creditors, shall not, at a fair valuation, be sufficient in amount to pay his debts; (16) "judge" shall mean a judge of a court of bankruptcy, not including the referee; (17) "oath" shall include affirmation; (18) "officer" shall include clerk, marshal, receiver, referee, and trustee, and the imposing of a duty upon or the forbidding of an act by any officer shall include his successor and any person authorized by law to perform the duties of such officer; (19) "persons" shall include corporations, except where otherwise specified, and officers, partnerships, and women, and when used with reference to the commission of acts which are herein forbidden shall include persons who are participants in the forbidden acts, and the agents, officers, and members of the board of directors or trustees, or other similar controlling bodies of corporations; (20) "petition" shall mean a paper filed in a court of bankruptcy or with a clerk or deputy clerk by a debtor praying for the benefits of this act, or by creditors alleging the commission of an act of bankruptcy by a debtor therein named; (21) "referee" shall mean the referee who has jurisdiction of the case or to whom the case has been referred, or anyone acting in his stead; (22) "conceal" shall include secrete, falsify, and mutilate; (23) "secured creditor" shall include a creditor who has security for his debts upon the property of the bankrupt of a nature to be assignable under this act, or who owns such a debt for which some indorser, surety, or other persons secondarily liable for the bankrupt has such security upon the bankrupt's assets; (24) "States" shall include the Territories, the Indian Territory, Alaska, and the District of Columbia; (25) "transfer" shall include the sale and every other and different mode of disposing of or parting with property, or the possession



of property, absolutely or conditionally, as a payment, pledge, mortgage, gift, or security; (26) "trustee" shall include all of the trustees of an estate; (27) "wage-earner" shall mean an individual who works for wages, salary, or hire, at a rate of compensation not exceeding one thousand five hundred dollars per year; (28) words importing the masculine gender may be applied to and include corporations, partnerships, and women; (29) words importing the plural number may be applied to and mean only a single person or thing; (30) words importing the singular number may be applied to and mean several persons or things.

## CHAPTER II.

## CREATION OF COURTS OF BANKRUPTCY AND THEIR JURISDICTION.

§ 2. That the courts of bankruptcy as hereinbefore defined, viz., the district courts of the United States in the several States, the supreme court of the District of Columbia, the district courts of the several Territories, and the United States courts in the Indian Territory and the District of Alaska, are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as now established, or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they are now or may be hereafter held, to (1) adjudge persons bankrupt who have had their principal place of business, resided, or had their domicile within their respective territorial jurisdictions for the preceding six months, or the greater portion thereof, or who do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdictions, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States and have property within their jurisdiction; (2) allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates; (3) appoint receivers or the marshals, upon application of parties in interest, in case the courts shall find it absolutely necessary, for the preservation of estates, to take charge of the property of bankrupts after the filing of the petition and until it is dismissed or the trustee is qualified; (4) arraign, try, and punish bankrupts, officers, and other persons, and the agents, officers, members of the board of directors or trustees, or other similar controlling bodies of corporations for violations of this act, in accordance with the laws of procedure of the United States now in force, or such as may be hereafter enacted, regulating trials for the alleged violation of laws of the United States; (5) authorize the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustees, if necessary in the best interests of the estates, *and allow such officers additional compensation for such services as provided in section forty-eight of this act*; (6) bring in and substitute additional persons or parties in proceedings in bankruptcy when necessary for the complete determination of a matter in controversy; (7) cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided; (8) close estates, whenever it appears that they have been fully administered, by approving the final accounts and discharging the trustees, and reopen them, whenever it appears they were closed before being fully administered; (9) confirm or reject compositions between debtors and their

creditors, and set aside compositions and reinstate the cases; (10) consider and confirm, modify or overrule, or return, with instructions for further proceedings, records and findings certified to them by referees; (11) determine all claims of bankrupts to their exemptions; (12) discharge or refuse to discharge bankrupts and set aside discharges and reinstate the cases; (13) enforce obedience by bankrupts, officers, and other persons to all lawful orders, by fine or imprisonment or fine and imprisonment; (14) extradite bankrupts from their respective districts to other districts; (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this act; (16) punish persons for contempts committed before referees; (17) pursuant to the recommendation of creditors, or when they neglect to recommend the appointment of trustees, appoint trustees, and upon complaints of creditors, remove trustees for cause upon hearings and after notices to them; (18) tax costs, whenever they are allowed by law, and render judgments therefor against the unsuccessful party, or the successful party for cause, or in part against each of the parties, and against estates, in proceedings in bankruptcy; (19) transfer cases to other courts of bankruptcy; and (20) *exercise ancillary jurisdiction over persons or property within their respective territorial limits in aid of a receiver or trustee appointed in any bankruptcy proceedings pending in any other court of bankruptcy.* .

Nothing in this section contained shall be construed to deprive a court of bankruptcy of any power it would possess were certain specific powers not herein enumerated.

## CHAPTER III.

## BANKRUPTS.

## § 3. Acts of Bankruptcy.

*a* Acts of bankruptcy by a person shall consist of his having (1) conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay, or defraud his creditors, or any of them; or (2) transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or (3) suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference; or (4) made a general assignment for the benefit of his creditors, or, being insolvent, applied for a receiver or trustee for his property or because of insolvency a receiver or trustee has been put in charge of his property under the laws of a State, of a Territory, or of the United States; or (5) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground.

*b* A petition may be filed against a person who is insolvent and who has committed an act of bankruptcy within four months after the commission of such act. Such time shall not expire until four months after (1) the date of the recording or registering of the transfer or assignment when the act consists in having made a transfer of any of his property with intent to hinder, delay, or defraud his creditors or for the purpose of giving a preference as hereinbefore provided, or a general assignment for the benefit of his creditors, if by law such recording or registering is required or permitted, or, if it is not, from the date when the beneficiary takes notorious, exclusive, or continuous possession of the property unless the petitioning creditors have received actual notice of such transfer or assignment.

*c* It shall be a complete defense to any proceedings in bankruptcy instituted under the first subdivision of this section to allege and prove that the party proceeded against was not insolvent as defined in this act at the time of the filing the petition against him, and if solvency at such date is proved by the alleged bankrupt the proceedings shall be dismissed, and under said subdivision one the burden of proving solvency shall be on the alleged bankrupt.

*d* Whenever a person against whom a petition has been filed as hereinbefore provided under the second and third subdivisions of this section takes issue with and denies the allegation of his insolvency, it shall be his duty to appear in court on the hearing, with his books, papers, and accounts, and submit to an examination, and give testimony as to all matters tending to establish solvency or insolvency, and in case of his failure to so attend and submit to examination the burden of proving his solvency shall rest upon him.



*e* Whenever a petition is filed by any person for the purpose of having another adjudged a bankrupt, and an application is made to take charge of and hold the property of the alleged bankrupt, or any part of the same, prior to the adjudication and pending a hearing on the petition, the petitioner or applicant shall file in the same court a bond with at least two good and sufficient sureties who shall reside within the jurisdiction of said court, to be approved by the court or a judge thereof, in such sum as the court shall direct, conditioned for the payment, in case such petition is dismissed, to the respondent, his or her personal representatives, all costs, expenses, and damages occasioned by such seizure, taking, and detention of the property of the alleged bankrupt.

If such petition be dismissed by the court or withdrawn by the petitioner, the respondent or respondents shall be allowed all costs, counsel fees, expenses, and damages occasioned by such seizure, taking, or detention of such property. Counsel fees, costs, expenses, and damages shall be fixed and allowed by the court, and paid by the obligors in such bond.

#### § 4. Who may become bankrupts.

*a* Any person, except a municipal, railroad, insurance, or banking corporation, shall be entitled to the benefits of this Act as a voluntary bankrupt.

*b* Any natural person, except a wage-earner or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any moneyed, business, or commercial corporation, except a municipal, railroad, insurance, or banking corporation, owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this Act.

The bankruptcy of a corporation shall not release its officers, directors, or stockholders, as such, from any liability under the laws of a State or Territory or of the United States.

#### § 5. Partners.

*a* A partnership, during the continuation of the partnership business, or after its dissolution and before the final settlement thereof, may be adjudged a bankrupt.

*b* The creditors of the partnership shall appoint the trustee; in other respects so far as possible the estate shall be administered as herein provided for other estates.

*c* The court of bankruptcy which has jurisdiction of one of the partners may have jurisdiction of all the partners and of the administration of the partnership and individual property.

*d* The trustee shall keep separate accounts of the partnership property and of the property belonging to the individual partners.

*e* The expenses shall be paid from the partnership property and the individual property in such proportions as the court shall determine.

*f* The net proceeds of the partnership property shall be appropriated to



the payment of the partnership debts, and the net proceeds of the individual estate of each partner to the payment of his individual debts. Should any surplus remain of the property of any partner after paying his individual debts, such surplus shall be added to the partnership assets and be applied to the payment of the partnership debts. Should any surplus of the partnership property remain after paying the partnership debts, such surplus shall be added to the assets of the individual partners in the proportion of their respective interests in the partnership.

*g* The court may permit the proof of the claim of the partnership estate against the individual estates, and vice versa, and may marshal the assets of the partnership estate and individual estates so as to prevent preferences and secure the equitable distribution of the property of the several estates.

*h* In the event of one or more but not all of the members of a partnership being adjudged bankrupt, the partnership property shall not be administered in bankruptcy, unless by consent of the partner or partners not adjudged bankrupt; but such partner or partners not adjudged bankrupt shall settle the partnership business as expeditiously as its nature will permit, and account for the interest of the partner or partners adjudged bankrupt.

#### **§ 6. Exemptions of Bankrupts.**

*a* This act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months or the greater portion thereof immediately preceding the filing of the petition.

#### **§ 7. Duties of Bankrupts.**

*a* The bankrupt shall (1) attend the first meeting of his creditors, if directed by the court or a judge thereof to do so, and the hearing upon his application for a discharge, if filed; (2) comply with all lawful orders of the court; (3) examine the correctness of all proofs of claims filed against his estate; (4) execute and deliver such papers as shall be ordered by the court; (5) execute to his trustee transfers of all his property in foreign countries; (6) immediately inform his trustee of any attempt, by his creditors or other persons, to evade the provisions of this act, coming to his knowledge; (7) in case of any persons having to his knowledge proved a false claim against his estate, disclose that fact immediately to his trustee; (8) prepare, make oath to, and file in court within ten days, unless further time is granted, after the adjudication, if an involuntary bankrupt, and with the petition if a voluntary bankrupt, a schedule of his property, showing the amount and kind of property, the location thereof, its money value in detail, and a list of his creditors, showing their residences, if known, if unknown, that fact to be stated, the amounts due each of them, the consideration thereof, the security held by them, if any, and a claim for such exemptions as he may be entitled to, all in triplicate, one copy of each for the clerk, one for the referee, and one for the trustee; and (9) when present at the first meeting of his creditors, and at such other times as the

court shall order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate; but no testimony given by him shall be offered in evidence against him in any criminal proceeding.

PROVIDED, HOWEVER, That he shall not be required to attend a meeting of his creditors, or at or for an examination at a place more than one hundred and fifty miles distant from his home or principal place of business, or to examine claims except when presented to him, unless ordered by the court, or a judge thereof, for cause shown, and the bankrupt shall be paid his actual expenses from the estate when examined or required to attend at any place other than the city, town, or village of his residence.

#### § 8. Death or Insanity of Bankrupts.

*a* The death or insanity of a bankrupt shall not abate the proceedings, but the same shall be conducted and conclude in the same manner, so far as possible, as though he had not died or become insane: PROVIDED, That in case of death the widow and children shall be entitled to all rights of dower and allowance fixed by the laws of the State of the bankrupt's residence.

#### § 9. Protection and Detention of Bankrupts.

*a* A bankrupt shall be exempt from arrest upon civil process except in the following cases: (1) When issued from a court of bankruptcy for contempt or disobedience of its lawful orders; (2) when issued from a State court having jurisdiction, and served within such State, upon a debt or claim from which his discharge in bankruptcy would not be a release, and in such case he shall be exempt from such arrest when in attendance upon a court of bankruptcy or engaged in the performance of a duty imposed by this act.

*b* The judge may, at any time after the filing of a petition by or against a person, and before the expiration of one month after the qualification of the trustee, upon satisfactory proof by the affidavits of at least two persons that such bankrupt is about to leave the district in which he resides or has his principal place of business to avoid examination, and that his departure will defeat the proceedings in bankruptcy, issue a warrant to the marshal, directing him to bring such bankrupt forthwith before the court for examination. If upon hearing the evidence of the parties it shall appear to the court or a judge thereof that the allegations are true and that it is necessary, he shall order such marshal to keep such bankrupt in custody not exceeding ten days, but not imprison him, until he shall be examined and released or give bail conditioned for his appearance for examination, from time to time, not exceeding in all ten days, as required by the court, and for his obedience to all lawful orders made in reference thereto.

**§ 10. Extradition of Bankrupts.**

*a* Whenever a warrant for the apprehension of a bankrupt shall have been issued, and he shall have been found within the jurisdiction of a court other than the one issuing the warrant, he may be extradited in the same manner in which persons under indictment are now extradited from one district within which a district court has jurisdiction to another.

**§ 11. Suits by and against Bankrupts.**

*a* A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after an adjudication or the dismissal of the petition; if such person is adjudged a bankrupt, such action may be further stayed until twelve months after the date of such adjudication, or, if within that time such person applies for a discharge, then until the question of such discharge is determined.

*b* The court may order the trustee to enter his appearance and defend any pending suit against the bankrupt.

*c* A trustee may, with the approval of the court, be permitted to prosecute as trustee any suit commenced by the bankrupt prior to the adjudication, with like force and effect as though it had been commenced by him.

*d* Suits shall not be brought by or against a trustee of a bankrupt estate subsequent to two years after the estate has been closed.

**§ 12. Compositions, when Confirmed.**

*a* A bankrupt may offer, either before or after adjudication, terms of composition to his creditors after, but not before, he has been examined in open court or at a meeting of his creditors, and has filed in court the schedule of his property and the list of his creditors required to be filed by bankrupts. In compositions before adjudication the bankrupt shall file the required schedules, and thereupon the court shall call a meeting of creditors for the allowance of claims, examination of the bankrupt, and preservation or conduct of estates, at which meeting the judge or referee shall preside; and action upon the petition for adjudication, shall be delayed until it shall be determined whether such composition shall be confirmed.

*b* An application for the confirmation of a composition may be filed in the court of bankruptcy after, but not before, it has been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number must represent a majority in amount of such claims, and the consideration to be paid by the bankrupt to his creditors, and the money necessary to pay all debts which have priority and the cost of the proceedings, have been deposited in such place as shall be designated by and subject to the order of the judge.

*c* A date and place, with reference to the convenience of the parties in interest, shall be fixed for the hearing upon each application for the con-



firmation of a composition, and such objections as may be made to its confirmation.

*d* The judge shall confirm a composition if satisfied that (1) it is for the best interests of the creditors; (2) the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge; and (3) the offer and its acceptance are in good faith and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden.

*e* Upon the confirmation of a composition, the consideration shall be distributed as the judge shall direct, and the case dismissed. Whenever a composition is not confirmed, the estate shall be administered in bankruptcy as herein provided.

#### § 13. Compositions, when Set Aside.

*a* The judge may, upon the application of parties in interest filed at any time within six months after a composition has been confirmed, set the same aside and reinstate the case if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition, and that the knowledge thereof has come to the petitioners since the confirmation of such composition.

#### § 14. Discharges, when Granted.

*a* Any person may, after the expiration of one month and within the next twelve months subsequent to being adjudged a bankrupt, file an application for a discharge in the court of bankruptcy in which the proceedings are pending; if it shall be made to appear to the judge that the bankrupt was unavoidably prevented from filing it within such time, it may be filed within but not after the expiration of the next six months.

*b* *The judge shall hear the application for a discharge and such proofs and pleas as may be made in opposition thereto by the trustee or other parties in interest, at such time as will give the trustee or parties in interest a reasonable opportunity to be fully heard, and investigate the merits of the application and discharge the applicant unless he has (1) committed an offense punishable by imprisonment as herein provided; or (2) with intent to conceal his financial condition, destroyed, concealed, or failed to keep books of account or records from which such condition might be ascertained; or (3) obtained money or property on credit upon a materially false statement in writing, made by him to any person or his representative for the purpose of obtaining credit from such person; or (4) at any time subsequent to the first day of the four months immediately preceding the filing of the petition transferred, removed, destroyed, or concealed, or permitted to be removed, destroyed, or concealed, any of his property, with intent to hinder, delay, or defraud his creditors; or (5) in voluntary proceedings been granted a discharge in bankruptcy within six years; or (6) in the course of the proceedings in bankruptcy refused to obey any lawful order of, or to answer any material question approved by the court:*

*Provided, That a trustee shall not interpose objections to a bankrupt's discharge until he shall be authorized so to do at a meeting of creditors called for that purpose.*

*c* The confirmation of a composition shall discharge the bankrupt from his debts, other than those agreed to be paid by the terms of the composition and those not affected by a discharge.

**§ 15. Discharges, when Revoked.**

*a* The judge may, upon the application of parties in interest who have not been guilty of undue laches, filed at any time within one year after a discharge shall have been granted, revoke it upon a trial if it shall be made to appear that it was obtained through the fraud of the bankrupt, and that the knowledge of the fraud has come to the petitioners since the granting of the discharge, and that the actual facts did not warrant the discharge.

**§ 16. Co-Debtors of Bankrupts.**

*a* The liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankrupt shall not be altered by the discharge of such bankrupt.

**§ 17. Debts not Affected by a Discharge.**

*a* A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (1) are due as a tax levied by the United States, the State, county, district, or municipality in which he resides; (2) are liabilities for obtaining property by false pretenses or false representations, or for wilful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for criminal conversation; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity.



## CHAPTER IV.

## COURTS AND PROCEDURE THEREIN.

**§ 18. Process, Pleadings, and Adjudications.**

*a* Upon the filing of a petition for involuntary bankruptcy, service thereof, with a writ of subpoena, shall be made upon the person therein named as defendant in the same manner that service of such process is now had upon the commencement of a suit in equity in the courts of the United States, except that it shall be returnable within fifteen days, unless the judge shall for cause fix a longer time; but in case personal service cannot be made, then notice shall be given by publication in the same manner and for the same time as provided by law for notice by publication in suits to enforce a legal or equitable lien in courts of the United States, except that, unless the judge shall otherwise direct, the order shall be published not more than once a week for two consecutive weeks, and the return day shall be ten days after the last publication unless the judge shall for cause fix a longer time.

*b* The bankrupt, or any creditor, may appear and plead to the petition within five days after the return day, or within such further time as the court may allow.

*c* All pleadings setting up matters of fact shall be verified under oath.

*d* If the bankrupt, or any of his creditors, shall appear, within the time limited, and controvert the facts alleged in the petition, the judge shall determine, as soon as may be, the issues presented by the pleadings, without the intervention of a jury, except in cases where a jury trial is given by this act, and make the adjudication or dismiss the petition.

*e* If on the last day within which pleadings may be filed none are filed by the bankrupt or any of his creditors, the judge shall on the next day, if present, or as soon thereafter as practicable, make the adjudication or dismiss the petition.

*f* If the judge is absent from the district, or the division of the district in which the petition is pending, on the next day after the last day on which pleadings may be filed, and none have been filed by the bankrupt or any of his creditors, the clerk shall forthwith refer the case to the referee.

*g* Upon the filing of a voluntary petition the judge shall hear the petition and make the adjudication or dismiss the petition. If the judge is absent from the district, or the division of the district in which the petition is filed at the time of the filing, the clerk shall forthwith refer the case to the referee.

**§ 19. Jury Trials.**

*a* A person against whom an involuntary petition has been filed shall be entitled to have a trial by jury, in respect to the question of his insolvency,

except as herein otherwise provided, and any act of bankruptcy alleged in such petition to have been committed, upon filing a written application therefor at or before the time within which an answer may be filed. If such application is not filed within such time, a trial by jury shall be deemed to have been waived.

*b* If a jury is not in attendance upon the court, one may be specially summoned for the trial, or the case may be postponed, or, if the case is pending in one of the district courts within the jurisdiction of a circuit court of the United States, it may be certified for trial to the circuit court sitting at the same place, or by consent of parties when sitting at any other place in the same district, if such circuit court has or is to have a jury first in attendance.

*c* The right to submit matters in controversy, or an alleged offense under this act, to a jury shall be determined and enjoyed, except as provided by this act, according to the United States laws now in force or such as may be hereafter enacted in relation to trials by jury.

#### § 20. Oaths, Affirmations.

*a* Oaths required by this act, except upon hearings in court, may be administered by (1) referees; (2) officers authorized to administer oaths in proceedings before the courts of the United States, or under the laws of the State where the same are to be taken; and (3) diplomatic or consular officers of the United States in any foreign country.

*b* Any person conscientiously opposed to taking an oath may, in lieu thereof, affirm. Any person who shall affirm falsely shall be punished as for the making of a false oath.

#### § 21. Evidence.

*a* A court of bankruptcy may, upon application of any officer, bankrupt, or creditor, by order require any designated person, including the bankrupt and his wife, to appear in court or before a referee or the judge of any State court, to be examined concerning the acts, conduct, or property of a bankrupt whose estate is in process of administration under this act: *Provided*, That the wife may be examined only touching business transacted by her or to which she is a party, and to determine the fact whether she has transacted or been a party to any business of the bankrupt.

*b* The right to take depositions in proceedings under this act shall be determined and enjoyed according to the United States laws now in force, or such as may be hereafter enacted relating to the taking of depositions, except as herein provided.

*c* Notice of the taking of depositions shall be filed with the referee in every case. When depositions are to be taken in opposition to the allowance of a claim notice shall also be served upon the claimant, and when in opposition to a discharge notice shall also be served upon the bankrupt.

*d* Certified copies of proceedings before a referee, or of papers, when issued by the clerk or referee, shall be admitted as evidence with like force and effect as certified copies of the records of district courts of the United States are now or may hereafter be admitted as evidence.

*e* A certified copy of the order approving the bond of a trustee shall constitute conclusive evidence of the vesting in him of the title to the property of the bankrupt, and if recorded shall impart the same notice that a deed from the bankrupt to the trustee if recorded would have imparted had not bankruptcy proceedings intervened.

*f* A certified copy of an order confirming or setting aside a composition, or granting or setting aside a discharge, not revoked, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and of the fact that the order was made.

*g* A certified copy of an order confirming a composition shall constitute evidence of the revesting of the title of his property in the bankrupt, and if recorded shall impart the same notice that a deed from the trustee to the bankrupt if recorded would impart.

#### § 22. Reference of Cases after Adjudication.

*a* After a person has been adjudged a bankrupt the judge may cause the trustee to proceed with the administration of the estate, or refer it (1) generally to the referee or specially with only limited authority to act in the premises or to consider and report upon specified issues; or (2) to any referee within the territorial jurisdiction of the court, if the convenience of parties in interest will be served thereby, or for cause, or if the bankrupt does not do business, reside, or have his domicile in the district.

*b* The judge may, at any time, for the convenience of parties or for cause, transfer a case from one referee to another.

#### § 23. Jurisdiction of United States and State Courts.

*a* The United States circuit courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees, in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

*b* Suits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant, except suits for the recovery of property under section sixty, subdivision b; section sixty-seven, subdivision e; and *section seventy; subdivision e.*

*c* The United States circuit courts shall have concurrent jurisdiction with the courts of bankruptcy, within their respective territorial limits, of the offenses enumerated in this act.

#### § 24. Jurisdiction of Appellate Courts.

*a* The Supreme Court of the United States, the circuit courts of appeals of the United States, and the supreme courts of the Territories, in vacation in



chambers and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases. The Supreme Court of the United States shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the supreme court of the District of Columbia.

*b* The several circuit courts of appeal shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised on due notice and petition by any party aggrieved.

#### § 25. Appeals and Writs of Error.

*a* That appeals, as in equity cases may be taken in bankruptcy proceedings from the courts of bankruptcy to the circuit court of appeals of the United States and to the supreme court of the Territories, in the following cases, to wit, (1) from a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) from a judgment granting or denying a discharge; and (3) from a judgment allowing or rejecting a debt or claim of five hundred dollars or over. Such appeal shall be taken within ten days after the judgment appealed from has been rendered, and may be heard and determined by the appellate court in term or vacation, as the case may be.

*b* From any final decision of a court of appeals, allowing or rejecting a claim under this act, an appeal may be had under such rules and within such time as may be prescribed by the Supreme Court of the United States, in the following cases and no other:

1. Where the amount in controversy exceeds the sum of two thousand dollars, and the question involved is one which might have been taken on appeal or writ of error from the highest court of a State to the Supreme Court of the United States; or

2. Where some Justice of the Supreme Court of the United States shall certify that in his opinion the determination of the question or questions involved in the allowance or rejection of such claim is essential to a uniform construction of this act throughout the United States.

*c* Trustees shall not be required to give bond when they take appeals or sue out writs of error.

*d* Controversies may be certified to the Supreme Court of the United States from other courts of the United States, and the former court may exercise jurisdiction thereof and issue writs of certiorari pursuant to the provisions of the United States laws now in force or such as may be hereafter enacted.

#### § 26. Arbitration of Controversies.

*a* The trustee may, pursuant to the direction of the court, submit to arbitration any controversy arising in the settlement of the estate.

*b* Three arbitrators shall be chosen by mutual consent, or one by the trustee, one by the other party to the controversy, and the third by the two so chosen, or if they fail to agree in five days after their appointment the court shall appoint the third arbitrator.

*c* The written finding of the arbitrators, or a majority of them, as to the issues presented, may be filed in court and shall have like force and effect as the verdict of a jury.

#### § 27. **Compromises.**

*a* The trustee may, with the approval of the court, compromise any controversy arising in the administration of the estate upon such terms as he may deem for the best interests of the estate.

#### § 28. **Designation of Newspapers.**

*a* Courts of bankruptcy shall by order designate a newspaper published within their respective territorial districts, and in the county in which the bankrupt resides or the major part of his property is situated, in which notices required to be published by this act and orders which the court may direct to be published shall be inserted. Any court may in a particular case, for the convenience of parties in interest, designate some additional newspaper in which notices and orders in such case shall be published.

#### § 29. **Offenses.**

*a* A person shall be punished, by imprisonment for a period not to exceed five years, upon conviction of the offense of having knowingly and fraudulently appropriated to his own use, embezzled, spent, or unlawfully transferred any property or secreted or destroyed any document belonging to a bankrupt estate which came into his charge as trustee.

*b* A person shall be punished, by imprisonment for a period not to exceed two years, upon conviction of the offense of having knowingly and fraudulently (1) concealed while a bankrupt, or after his discharge, from his trustee any of the property belonging to his estate in bankruptcy; or (2) made a false oath or account in, or in relation to, any proceeding in bankruptcy; (3) presented under oath any false claim for proof against the estate of a bankrupt, or used any such claim in composition personally or by agent, proxy, or attorney, or as agent, proxy, or attorney; or (4) received any material amount of property from a bankrupt after the filing of the petition, with intent to defeat this act; or (5) extorted or attempted to extort any money or property from any person as a consideration for acting or forbearing to act in bankruptcy proceedings.

*c* A person shall be punished by fine, not to exceed five hundred dollars, and forfeit his office, and the same shall thereupon become vacant, upon conviction of the offense of having knowingly (1) acted as a referee in a case in which he is directly or indirectly interested; or (2) purchased, while a referee, directly or indirectly, any property of the estate in bankruptcy of



which he is referee; or (3) refused, while a referee or trustee, to permit a reasonable opportunity for the inspection of the accounts relating to the affairs of, and the papers and records of, estates in his charge by parties in interest when directed by the court so to do.

*d* A person shall not be prosecuted for any offense arising under this act unless the indictment is found or the information is filed in court within one year after the commission of the offense.

**§ 30. Rules, Forms, and Orders.**

*a* All necessary rules, forms, and orders as to procedure and for carrying this act into force and effect shall be prescribed, and may be amended from time to time, by the Supreme Court of the United States.

**§ 31. Computation of Time.**

*a* Whenever time is enumerated by days in this act, or in any proceeding in bankruptcy, the number of days shall be computed by excluding the first and including the last, unless the last fall on a Sunday or holiday, in which event the day last included shall be the next day thereafter which is not a Sunday or a legal holiday.

**§ 32. Transfer of Cases.**

*a* In the event petitions are filed against the same person, or against different members of a partnership, in different courts of bankruptcy each of which has jurisdiction, the cases shall be transferred, by order of the courts relinquishing jurisdiction, to and be consolidated by the one of such courts which can proceed with the same for the greatest convenience of parties in interest.

## CHAPTER V.

## OFFICERS, THEIR DUTIES AND COMPENSATIONS.

**§ 33. Creation of Two Officers.**

*a* The offices of referee and trustee are hereby created.

**§ 34. Appointment, Removal, and Districts of Referees.**

*a* Courts of bankruptcy shall, within the territorial limits of which they respectively have jurisdiction, (1) appoint referees, each for a term of two years, and may, in their discretion, remove them because their services are not needed or for other cause; and (2) designate, and from time to time change, the limits of the districts of referees, so that each county, where the services of a referee are needed, may constitute at least one district.

**§ 35. Qualifications of Referees.**

*a* Individuals shall not be eligible to appointment as referees unless they are respectively (1) competent to perform the duties of that office; (2) not holding any office of profit or emolument under the laws of the United States or of any State other than commissioners of deeds, justices of the peace, masters in chancery, or notaries public; (3) not related by consanguinity or affinity, within the third degree as determined by the common law, to any of the judges of the courts of bankruptcy or circuit courts of the United States, or of the justices or judges of the appellate courts of the districts wherein they may be appointed; and (4) residents of, or have their offices in, the territorial districts for which they are to be appointed.

**§ 36. Oaths of Office of Referees.**

*a* Referees shall take the same oath of office as that prescribed for judges of United States courts.

**§ 37. Number of Referees.**

*a* Such number of referees shall be appointed as may be necessary to assist in expeditiously transacting the bankruptcy business pending in the various courts of bankruptcy.

**§ 38. Jurisdiction of Referees.**

*a* Referees respectively are hereby invested, subject always to a review by the judge, within the limits of their districts as established from time to time, with jurisdiction to (1) consider all petitions referred to them by the clerks and make the adjudications or dismiss the petitions; (2) exercise the powers vested in courts of bankruptcy for the administering of oaths to and the

examination of persons as witnesses and for requiring the production of documents in proceedings before them, except the power of commitment; (3) exercise the powers of the judge for the taking possession and releasing of the property of the bankrupt in the event of the issuance by the clerk of a certificate showing the absence of a judge from the judicial district, or the division of the district, or his sickness, or inability to act; (4) perform such part of the duties, except as to questions arising out of the applications of bankrupts for compositions or discharges, as are by this act conferred on courts of bankruptcy and as shall be prescribed by rules or orders of the courts of bankruptcy of their respective districts, except as herein otherwise provided; and (5) upon the application of the trustee during the examination of the bankrupts, or other proceedings, authorize the employment of stenographers at the expense of the estates at a compensation not to exceed ten cents per folio for reporting and transcribing the proceedings.

#### § 39. Duties of Referees.

*a* Referees shall (1) declare dividends and prepare and deliver to trustees dividend sheets showing the dividends declared and to whom payable; (2) examine all schedules of property and lists of creditors filed by bankrupts and cause such as are incomplete or defective to be amended; (3) furnish such information concerning the estates in process of administration before them as may be requested by the parties in interest; (4) give notices to creditors as herein provided; (5) make up records embodying the evidence, or the substance thereof, as agreed upon by the parties in all contested matters arising before them, whenever requested to do so by either of the parties thereto, together with their findings therein, and transmit them to the judges; (6) prepare and file the schedules of property and lists of creditors required to be filed by the bankrupts, or cause the same to be done, when the bankrupts fail, refuse, or neglect to do so; (7) safely keep, perfect, and transmit to the clerks the records, herein required to be kept by them, when the cases are concluded; (8) transmit to the clerks such papers as may be on file before them whenever the same are needed in any proceedings in courts, and in like manner secure the return of such papers after they have been used, or, if it be impracticable to transmit the original papers, transmit certified copies thereof by mail; (9) upon application of any party in interest, preserve the evidence taken or the substance thereof as agreed upon by the parties before them when a stenographer is not in attendance; and (10) whenever their respective offices are in the same cities or towns where the courts of bankruptcy convene, call upon and receive from the clerks all papers filed in courts of bankruptcy which have been referred to them.

*b* Referees shall not (1) act in cases in which they are directly or indirectly interested; (2) practice as attorneys and counselors at law in any bankruptcy proceedings; or (3) purchase, directly or indirectly, any property of an estate in bankruptcy.

**§ 40. Compensation of Referees.**

*a* Referees shall receive as full compensation for their services, payable after they are rendered, a fee of fifteen dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and twenty-five cents for every proof of claim filed for allowance, to be paid from the estate, if any, as a part of the cost of administration, and from estates which have been administered before them one per centum commissions on all moneys disbursed to creditors by the trustee, or one-half of one per centum on the amount to be paid to creditors upon the confirmation of a composition.

*b* Whenever a case is transferred from one referee to another the judge shall determine the proportion in which the fee and commissions therefor shall be divided between the referees.

*c* In the event of the reference of a case being revoked before it is concluded, and when the case is specially referred, the judge shall determine what part of the fee and commissions shall be paid to the referee.

**§ 41. Contempts before Referees.**

*a* A person shall not, in proceedings before a referee, (1) disobey or resist any lawful order, process or writ; (2) misbehave during a hearing or so near the place thereof as to obstruct the same; (3) neglect to produce, after having been ordered to do so, any pertinent document; or (4) refuse to appear after having been subpoenaed, or, upon appearing, refuse to take the oath as a witness, or, after having taken the oath, refuse to be examined according to law: Provided, That no person shall be required to attend as a witness before a referee at a place outside of the State of his residence, and more than one hundred miles from such place of residence, and only in case his lawful mileage and fee for one day's attendance shall be first paid or tendered to him.

*b* The referee shall certify the facts to the judge, if any person shall do any of the things forbidden in this section. The judge shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if it is such as to warrant him in so doing, punish such person in the same manner and to the same extent as for a contempt committed before the court of bankruptcy, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of, or in the presence of, the court.

**§ 42. Records of Referees.**

*a* The records of all proceedings in each case before a referee shall be kept as nearly as may be in the same manner as records are now kept in equity cases in circuit courts of the United States.

*b* A record of the proceedings in each case shall be kept in a separate book or books, and shall, together with the papers on file, constitute the records of the case.

*c* The book or books containing a record of the proceedings shall, when



the case is concluded before the referee, be certified to by him, and, together with such papers as are on file before him, be transmitted to the court of bankruptcy and shall there remain as a part of the records of the court.

**§ 43. Referee's Absence or Disability.**

*a* Whenever the office of a referee is vacant, or its occupant is absent or disqualified to act, the judge may act, or may appoint another referee, or another referee holding an appointment under the same court may, by order of the judge, temporarily fill the vacancy.

**§ 44. Appointment of Trustees.**

*a* The creditors of a bankrupt estate shall, at their first meeting after the adjudication or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has been set aside or a discharge revoked, or if there is a vacancy in the office of trustee, appoint one trustee or three trustees of such estate. If the creditors do not appoint a trustee or trustees as herein provided, the court shall do so.

**§ 45. Qualifications of Trustees.**

*a* Trustees may be (1) individuals who are respectively competent to perform the duties of that office, and reside or have an office in the judicial district within which they are appointed, or (2) corporations authorized by their charters or by law to act in such capacity and having an office in the judicial district within which they are appointed.

**§ 46. Death or Removal of Trustees.**

*a* The death or removal of a trustee shall not abate any suit or proceeding which he is prosecuting or defending at the time of his death or removal, but the same may be proceeded with or defended by his joint trustee or successor in the same manner as though the same had been commenced or was being defended by such joint trustee alone or by such successor.

**§ 47. Duties of Trustees.**

*a* Trustees shall respectively (1) account for and pay over to the estates under their control all interest received by them upon property of such estate; (2) *Collect and reduce to money the property of the estates for which they are trustees, under the direction of the court, and close up the estate as expeditiously as is compatible with the best interests of the parties in interest; and such trustees, as to all property in the custody or coming into the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies, and powers of a creditor holding a lien by legal or equitable proceedings thereon; and also, as to all property not in the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies, and powers of a judgment creditor holding an execution duly returned unsatisfied.* (3) Deposit all money received by them in one of the designated depositories; (4) disburse money



only by check or draft on the depositories in which it has been deposited; (5) furnish such information concerning the estates of which they are trustees and their administration as may be requested by parties in interest; (6) keep regular accounts showing all amounts received and from what sources and all amounts expended and on what accounts; (7) lay before the final meeting of the creditors detailed statements of the administration of the estates; (8) make final reports and file final accounts with the courts fifteen days before the days fixed for the final meetings of the creditors; (9) pay dividends within ten days after they are declared by the referees; (10) report to the courts, in writing, the condition of the estates and the amounts of money on hand, and such other details as may be required by the courts, within the first month after their appointment and every two months thereafter, unless otherwise ordered by the courts; and (11) set apart the bankrupt's exemptions and report the items and estimated value thereof to the court as soon as practicable after their appointment.

b Whenever three trustees have been appointed for an estate, the concurrence of at least two of them shall be necessary to the validity of their every act concerning the administration of the estate.

c The trustee shall, within thirty days after the adjudication, file a certified copy of the decree of adjudication in the office where conveyances of real estate are recorded in every county where the bankrupt owns real estate not exempt from execution, and pay the fee for such filing, and he shall receive a compensation of fifty cents for each copy so filed, which, together with the filing fee, shall be paid out of the estate of the bankrupt as a part of the cost and disbursements of the proceedings.

#### § 48. Compensation of Trustees, Receivers and Marshals.

*a Trustees shall receive for their services, payable after they are rendered, a fee of five dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and such commissions on all moneys disbursed or turned over to any person, including lien holders, by them, as may be allowed by the courts, not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than fifteen hundred dollars, two per centum on moneys in excess of fifteen hundred dollars and less than ten thousand dollars, and one per centum on moneys in excess of ten thousand dollars. And in case of the confirmation of a composition after the trustee has qualified the court may allow him, as compensation, not to exceed one-half of one per centum of the amount to be paid the creditors on such composition.*

b In the event of an estate being administered by three trustees instead of one trustee or by successive trustees, the court shall apportion the fees and commissions between them according to the services actually rendered, so that there shall not be paid to trustees for the administering of any estate a greater amount than one trustee would be entitled to.

c The court may, in its discretion, withhold all compensation from any trustee who has been removed for cause.

d *Receivers or marshals appointed pursuant to section two, subdivision three, of this Act shall receive for their services, payable after they are rendered, compensation by way of commissions upon the moneys disbursed or turned over to any person, including lien holders, by them, and also upon the moneys turned over by them or afterwards realized by the trustees from property turned over in kind by them to the trustees, as the court may allow, not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than one thousand five hundred dollars, two per centum on moneys in excess of one thousand five hundred dollars and less than ten thousand dollars, and one per centum on moneys in excess of ten thousand dollars: Provided, That in case of the confirmation of a composition such commissions shall not exceed one-half of one per centum of the amount to be paid creditors on such compositions: Provided further, That when the receiver or marshal acts as a mere custodian and does not carry on the business of the bankrupt as provided in clause five of section two of this Act, he shall not receive nor be allowed in any form or guise more than two per centum on the first thousand dollars or less, and one-half of one per centum on all above one thousand dollars on moneys disbursed by him or turned over by him to the trustee and on moneys subsequently realized from property turned over by him in kind to the trustee: Provided further, That before the allowance of compensation notice of application therefor, specifying the amount asked, shall be given to creditors in the manner indicated in section fifty-eight of this Act.*

e *Where the business is conducted by trustees, marshals, or receivers, as provided in clause five of section two of this Act, the court may allow such officers additional compensation for such services by way of commissions upon the moneys disbursed or turned over to any person, including lien holders, by them, and, in cases of receivers or marshals, also upon the moneys turned over by them or afterwards realized by the trustees from property turned over in kind by them to the trustees; such commissions not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than one thousand five hundred dollars, two per centum on moneys in excess of one thousand five hundred dollars and less than ten thousand dollars, and one per centum on moneys in excess of ten thousand dollars: Provided, That in case of the confirmation of a composition such commissions shall not exceed one-half of one per centum of the amount to be paid creditors on such composition: Provided further, That before the allowance of compensation notice of application therefor, specifying the amount asked, shall be given to creditors in the manner indicated in section fifty-eight of this Act.*

#### § 49. Accounts and Papers of Trustees.

a The accounts and papers of trustees shall be open to the inspection of officers and all parties in interest.

**§ 50. Bonds of Referees and Trustees.**

*a* Referees, before assuming the duties of their offices, and within such time as the district courts of the United States having jurisdiction shall prescribe, shall respectively qualify by entering into bond to the United States in such sum as shall be fixed by such courts, not to exceed five thousand dollars, with such sureties as shall be approved by such courts, conditioned for the faithful performance of their official duties.

*b* Trustees, before entering upon the performance of their official duties, and within ten days after their appointment, or within such further time, not to exceed five days, as the court may permit, shall respectively qualify by entering into bond to the United States, with such sureties as shall be approved by the courts, conditioned for the faithful performance of their official duties.

*c* The creditors of a bankrupt estate, at their first meeting after the adjudication, or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has been set aside or a discharge revoked, if there is a vacancy in the office of trustee, shall fix the amount of the bond of the trustee; they may at any time increase the amount of the bond. If the creditors do not fix the amount of the bond of the trustee as herein provided the court shall do so.

*d* The court shall require evidence as to the actual value of the property of sureties.

*e* There shall be at least two sureties upon each bond.

*f* The actual value of the property of the sureties, over and above their liabilities and exemptions, on each bond shall equal at least the amount of such bond.

*g* Corporations organized for the purpose of becoming sureties upon bonds, or authorized by law to do so, may be accepted as sureties upon the bonds of referees and trustees whenever the courts are satisfied that the rights of all parties in interest will be thereby amply protected.

*h* Bonds of referees, trustees, and designated depositories shall be filed of record in the office of the clerk of the court and may be sued upon in the name of the United States for the use of any person injured by a breach of their conditions.

*i* Trustees shall not be liable, personally or on their bonds, to the United States, for any penalties or forfeitures incurred by the bankrupts under this act, of whose estates they are respectively trustees.

*j* Joint trustees may give joint or several bonds.

*k* If any referee or trustee shall fail to give bond, as herein provided and within the time limited, he shall be deemed to have declined his appointment, and such failure shall create a vacancy in his office.

*l* Suits upon referees' bonds shall not be brought subsequent to two years after the alleged breach of the bond.

*m* Suits upon trustees' bonds shall not be brought subsequent to two years after the estate has been closed.



**§ 51. Duties of Clerks.**

*a* Clerks shall respectfully (1) account for, as for other fees received by them, the clerk's fee paid in each case and such other fees as may be received for certified copies of records which may be prepared for persons other than officers; (2) collect the fees of the clerk, referee, and trustee in each case instituted before filing the petition, except the petition of a proposed voluntary bankrupt which is accompanied by an affidavit stating that the petitioner is without, and cannot obtain, the money with which to pay such fees; (3) deliver to the referees upon application all papers which may be referred to them or, if the offices of such referees are not in the same cities or towns as the offices of such clerks, transmit such papers by mail, and in like manner return papers which were received from such referees after they have been used; (4) and within ten days after each case has been closed pay to the referee, if the case was referred, the fee collected for him, and to the trustee the fee collected for him at the time of filing the petition.

**§ 52. Compensation of Clerks and Marshals.**

*a* Clerks shall respectively receive as full compensation for their services to each estate, a filing fee of ten dollars, except when a fee is not required from a voluntary bankrupt.

*b* Marshals shall respectively receive from the estate where an adjudication in bankruptcy is made, except as herein otherwise provided, for the performance of their service in proceedings in bankruptcy, the same fees, and account for them in the same way, as they are entitled to receive for the performance of the same or similar services in other cases in accordance with laws now in force, or such as may be hereafter enacted, fixing the compensation of marshals.

**§ 53. Duties of Attorney-General.**

*a* The Attorney-General shall annually lay before Congress statistical tables showing for the whole country, and by States, the number of cases during the year of voluntary and involuntary bankruptcy; the amount of the property of the estates; the dividends paid and the expenses of administering such estates; and such other like information as he may deem important.

**§ 54. Statistics of Bankruptcy Proceedings.**

*a* Officers shall furnish in writing and transmit by mail such information as is within their knowledge, and as may be shown by the records and papers in their possession, to the Attorney-General, for statistical purposes, within ten days after being requested by him to do so.

## CHAPTER VI.

## CREDITORS.

**§ 55. Meetings of Creditors.**

*a* The court shall cause the first meeting of the creditors of a bankrupt to be held, not less than ten nor more than thirty days after the adjudication, at the county seat of the county in which the bankrupt has had his principal place of business, resided, or had his domicile; or if that place would be manifestly inconvenient as a place of meeting for the parties in interest, or if the bankrupt is one who does not do business, reside, or have his domicile within the United States, the court shall fix a place for the meeting which is the most convenient for parties in interest. If such meeting should by any mischance not be held within such time, the court shall fix the date, as soon as may be thereafter, when it shall be held.

*b* At the first meeting of creditors the judge or referee shall preside, and, before proceeding with the other business, may allow or disallow the claims of creditors there presented, and may publicly examine the bankrupt or cause him to be examined at the instance of any creditor.

*c* The creditors shall at each meeting take such steps as may be pertinent and necessary for the promotion of the best interests of the estate and the enforcement of this act.

*d* A meeting of creditors, subsequent to the first one, may be held at any time and place when all of the creditors who have secured the allowance of their claims sign a written consent to hold a meeting at such time and place.

*e* The court shall call a meeting of creditors whenever one-fourth or more in number of those who have proven their claims shall file a written request to that effect; if such request is signed by a majority of such creditors, which number represents a majority in amount of such claims, and contains a request for such meeting to be held at a designated place, the court shall call such meeting at such place within thirty days after the date of the filing of the request.

*f* Whenever the affairs of the estate are ready to be closed a final meeting of creditors shall be ordered.

**§ 56. Voters at Meetings of Creditors.**

*a* Creditors shall pass upon matters submitted to them at their meetings by a majority vote in number and amount of claims of all creditors whose claims have been allowed and are present, except as herein otherwise provided.

*b* Creditors holding claims which are secured or have priority shall not,



in respect to such claims, be entitled to vote at creditors' meetings, nor shall such claims be counted in computing either the number of creditors or the amount of their claims, unless the amounts of such claims exceed the values of such securities or priorities, and then only for such excess.

§ 57. **Proof and Allowance of Claims.**

*a* Proof of claims shall consist of a statement under oath, in writing, signed by a creditor setting forth the claim, the consideration therefor, and whether any, and, if so what, securities are held therefor, and whether any, and, if so what, payments have been made thereon, and that the sum claimed is justly owing from the bankrupt to the creditor.

*b* Whenever a claim is founded upon an instrument of writing, such instrument, unless lost or destroyed, shall be filed with the proof of claim. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim. After the claim is allowed or disallowed, such instrument may be withdrawn by permission of the court, upon leaving a copy thereof on file with the claim.

*c* Claims after being proved may, for the purpose of allowance, be filed by the claimants in the court where the proceedings are pending, or before the referee if the case has been referred.

*d* Claims which have been duly proved shall be allowed, upon receipt by or upon presentation to the court, unless objection to their allowance shall be made by parties in interest, or their consideration be continued for cause by the court upon its own motion.

*e* Claims of secured creditors and those who have priority may be allowed to enable such creditors to participate in the proceedings at creditors' meetings held prior to the determination of the value of their securities or priorities, but shall be allowed for such sums only as to the courts seem to be owing over and above the value of their securities or priorities.

*f* Objections to claims shall be heard and determined as soon as the convenience of the court and the best interests of the estates and the claimants will permit.

*g* The claims of creditors who have received preferences, voidable under section sixty, subdivision *b*, or to whom conveyances, transfers, assignments, or incumbrances, void or voidable under section sixty-seven, subdivision *e*, have been made or given, shall not be allowed unless such creditors shall surrender such preferences, conveyances, transfers, assignments, or incumbrances.

*h* The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors or by such creditors and the trustee, by agreement, arbitration, compromise, or litigation, as the court may direct, and the amount of such value shall be credited upon such claims and a dividend shall be paid only on the unpaid balance.

*i* Whenever a creditor, whose claim against a bankrupt estate is secured by the individual undertaking of any person, fails to prove such claim, such person

may do so in the creditor's name, and if he discharge such undertaking in whole or in part he shall be subrogated to that extent to the rights of the creditor.

*j* Debts owing to the United States, a State, a county, a district, or a municipality as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law.

*k* Claims which have been allowed may be reconsidered for cause and re-allowed or rejected in whole or in part, according to the equities of the case, before but not after the estate has been closed.

*l* Whenever a claim shall have been reconsidered and rejected, in whole or in part, upon which a dividend has been paid, the trustee may recover from the creditor the amount of the dividend received upon the claim if rejected in whole or the proportional part thereof if rejected only in part.

*m* The claim of any estate which is being administered in bankruptcy against any like estate may be proved by the trustee and allowed by the court in the same manner and upon like terms as the claims of other creditors.

*n* Claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication; or if they are liquidated by litigation and the final judgment therein is rendered within thirty days before or after the expiration of such time, then within sixty days after the rendition of such judgment: *Provided*, That the right of infants and insane persons without guardians, without notice of the proceedings, may continue six months longer.

#### § 58. Notices to Creditors.

*(a)* Creditors shall have at least ten days' notice by mail, to their respective addresses as they appear in the list of creditors of the bankrupt, or as afterwards filed with the papers in the case by the creditors, unless they waive notice in writing, of (1) all examinations of the bankrupt; (2) all hearings upon applications for the confirmation of compositions; (3) all meetings of creditors; (4) all proposed sales of property; (5) the declaration and time of payment of dividends; (6) the filing of the final accounts of the trustee, and the time when and the place where they will be examined and passed upon; (7) the proposed compromise of any controversy; (8) the proposed dismissal of the proceedings, and (9) there shall be thirty days' notice of all applications for the discharge of bankrupts.

*b* Notice to creditors of the first meeting shall be published at least once and may be published such number of additional times as the court may direct: the last publication shall be at least one week prior to the date fixed for the meeting. Other notices may be published as the court shall direct.

*c* All notices shall be given by the referee, unless otherwise ordered by the judge.

#### § 59. Who may File and Dismiss Petitions.

*a* Any qualified person may file a petition to be adjudged a voluntary bankrupt.

*b* Three or more creditors who have provable claims against any person which amount in the aggregate in excess of the value of securities held by them, if any, to five hundred dollars or over; or if all of the creditors of such person are less than twelve in number, then one of such creditors whose claim equals such amount may file a petition to have him adjudged a bankrupt.

*c* Petitions shall be filed in duplicate, one copy for the clerk and one for service on the bankrupt.

*d* If it be averred in the petition that the creditors of the bankrupt are less than twelve in number, and less than three creditors have joined as petitioners therein, and the answer avers the existence of a larger number of creditors, there shall be filed with the answer a list under oath of all the creditors, with their addresses, and thereupon the court shall cause all such creditors to be notified of the pendency of such petition and shall delay the hearing upon such petition for a reasonable time, to the end that parties in interest shall have an opportunity to be heard; if upon such hearing it shall appear that a sufficient number have joined in such petition, or if prior to or during such hearing a sufficient number shall join therein, the case may be proceeded with, but otherwise it shall be dismissed.

*e* In computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition, such creditors as were employed by him at the time of the filing of the petition or are related to him by consanguinity or affinity within the third degree, as determined by the common law, and have not joined in the petition, shall not be counted.

*f* Creditors other than original petitioners may at any time enter their appearance and join in the petition, or file an answer and be heard in opposition to the prayer of the petition.

*g* *A voluntary or involuntary petition shall not be dismissed by the petitioner or petitioners or for want of prosecution or by consent of parties until after notice to the creditors, and to that end the court shall, before entertaining an application for dismissal, require the bankrupt to file a list, under oath, of all his creditors, with their addresses, and shall cause notice to be sent to all such creditors of the pendency of such application, and shall delay the hearing thereon for a reasonable time to allow all creditors and parties in interest opportunity to be heard.*

#### § 60. Preferred Creditors.

*a* A person shall be deemed to have given a preference if, being insolvent, he has, within four months before the filing of the petition, or after the filing of the petition and before the adjudication, procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. Where the preference consists in a transfer, such period of four months shall not expire until four



months after the date of the recording or registering of the transfer, if by law such recording or registering is required.

*b If a bankrupt shall have procured or suffered a judgment to be entered against him in favor of any person or have made a transfer of any of his property, and if, at the time of the transfer, or of the entry of the judgment, or of the recording or registering of the transfer if by law recording or registering thereof is required, and being within four months before the filing of the petition in bankruptcy or after the filing thereof and before the adjudication, the bankrupt be insolvent and the judgment or transfer then operate as a preference, and the person receiving it or to be benefited thereby, or his agent acting therein, shall then have reasonable cause to believe that the enforcement of such judgment or transfer would effect a preference, it shall be voidable by the trustee and he may recover the property or its value from such person. And for the purpose of such recovery any court of bankruptcy, as hereinbefore defined, and any state court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.*

*c If a creditor has been preferred, and afterwards in good faith gives the debtor further credit without security of any kind for property which becomes a part of the debtor's estates, the amount of such new credit remaining unpaid at the time of the adjudication in bankruptcy may be set off against the amount which would otherwise be recoverable from him.*

*d If a debtor shall, directly or indirectly, in contemplation of the filing of a petition by or against him, pay money or transfer property to an attorney and counselor at law, solicitor in equity, or proctor in admiralty for services to be rendered, the transaction shall be re-examined by the court on petition of the trustee or any creditor and shall only be held valid to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the trustee for the benefit of the estate.*

## CHAPTER VII.

## ESTATES.

**§ 61. Depositories for Money.**

*a* Courts of bankruptcy shall designate, by order, banking institutions as depositories for the money of bankrupt estates, as convenient as may be to the residences of trustees, and shall require bonds to the United States, subject to their approval, to be given by such banking institutions, and may from time to time as occasion may require, by like order increase the number of depositories or the amount of any bond or change such depositories.

**§ 62. Expenses of Administering Estates.**

*a* The actual and necessary expenses incurred by officers in the administration of estates shall, except where other provisions are made for their payment, be reported in detail, under oath, and examined and approved or disapproved by the court. If approved, they shall be paid or allowed out of the estates in which they were incurred.

**§ 63. Debts which may be Proved.**

*a* Debts of the bankrupt may be proved and allowed against his estate which are (1) a fixed liability as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest; (2) due as costs taxable against an involuntary bankrupt who was at the time of the filing of the petition against him plaintiff in a cause of action which would pass to the trustee and which the trustee declines to prosecute after notice; (3) founded upon a claim for taxable costs incurred in good faith by a creditor before the filing of the petition in an action to recover a provable debt; (4) founded upon an open account, or upon a contract express or implied; and (5) founded upon provable debts reduced to judgments after the filing of the petition and before the consideration of the bankrupt's application for a discharge, less costs incurred and interest accrued after the filing of the petition and up to the time of the entry of such judgments.

*b* Unliquidated claims against the bankrupt may, pursuant to application to the court, be liquidated in such manner as it shall direct, and may thereafter be proved and allowed against his estate.



**§ 64. Debts which have Priority.**

*a* The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district, or municipality in advance of the payment of dividends to creditors, and upon filing the receipts of the proper public officers for such payment he shall be credited with the amount thereof, and in case any question arises as to the amount or legality of any such tax the same shall be heard and determined by the court.

*b* The debts to have priority, except as herein provided, and to be paid in full out of bankrupt estates, and the order of payment shall be (1) the actual and necessary cost of preserving the estate subsequent to filing the petition; (2) the filing fees paid by creditors in involuntary cases, and where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the expense of one or more creditors, the reasonable expenses of such recovery; (3) the cost of administration, including the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases, to the bankrupt in involuntary cases while performing the duties herein described, and to the bankrupt in voluntary cases, as the court may allow; (4) wages due to workmen, clerks, traveling or city salesmen,<sup>1</sup> or servants which have been earned within three months before the date of the commencement of proceedings, not to exceed three hundred dollars to each claimant; and (5) debts owing to any person who by the laws of the States or the United States is entitled to priority.

*c* In the event of the confirmation of a composition being set aside, or a discharge revoked, the property acquired by the bankrupt in addition to his estate at the time the composition was confirmed or the adjudication was made shall be applied to the payment in full of the claims of creditors for property sold to him on credit, in good faith, while such composition or discharge was in force, and the residue, if any, shall be applied to the payment of the debts which were owing at the time of the adjudication.

**§ 65. Declaration and Payment of Dividends.**

*a* Dividends of an equal per centum shall be declared and paid on all allowed claims, except such as have priority or are secured.

*b* The first dividend shall be declared within thirty days after the adjudication, if the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as have not been, but probably will be, allowed equals five per centum or more of such allowed claims. Dividends subsequent to the first shall be declared upon like terms as the first and as often as the amount shall equal ten per centum or more and upon closing the estate. Dividends may be declared oftener and in smaller proportions if the

<sup>1</sup>Amended by act of 1906, approved June 15.

judge shall so order: *Provided*, That the first dividend shall not include more than fifty per centum of the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as probably will be allowed: *And provided further*, That the final dividend shall not be declared within three months after the first dividend shall be declared.

*c* The rights of creditors who have received dividends, or in whose favor final dividends have been declared, shall not be affected by the proof and allowance of claims subsequent to the date of such payment or declarations of dividends; but the creditors proving and securing the allowance of such claims shall be paid dividends equal in amount to those already received by the other creditors if the estate equals so much before such other creditors are paid any further dividends.

*d* Whenever a person shall have been adjudged a bankrupt by a court without the United States and also by a court of bankruptcy, creditors residing within the United States shall first be paid a dividend equal to that received in the court without the United States by other creditors before creditors who have received a dividend in such court shall be paid any amounts.

*e* A claimant shall not be entitled to collect from a bankrupt estate any greater amount than shall accrue pursuant to the provisions of this act.

#### § 66. Unclaimed Dividends.

*a* Dividends which remain unclaimed for six months after the final dividend has been declared shall be paid by the trustee into court.

*b* Dividends remaining unclaimed for one year shall, under the direction of the court, be distributed to the creditors whose claims have been allowed but not paid in full, and after such claims have been paid in full the balance shall be paid to the bankrupt: *PROVIDED*, That in case unclaimed dividends belong to minors such minors may have one year after arriving at majority to claim such dividends.

#### § 67. Liens.

*a* Claims which for want of record or for other reasons would not have been valid liens as against the claims of the creditors of the bankrupt shall not be liens against his estate.

*b* Whenever a creditor is prevented from enforcing his rights as against a lien created, or attempted to be created, by his debtor, who afterwards becomes a bankrupt, the trustee of the estate of such bankrupt shall be subrogated to and may enforce such rights of such creditor for the benefit of the estate.

*c* A lien created by or obtained in or pursuant to any suit or proceeding at law or in equity, including an attachment upon mesne process or a judgment by confession, which was begun against a person within four months before the filing of a petition in bankruptcy by or against such person shall be dissolved by the adjudication of such person to be a bankrupt if (1) it appears that said lien was obtained and permitted while the defendant was insolvent and that its existence and enforcement will work a preference, or (2) the party or parties

to be benefited thereby had reasonable cause to believe the defendant was insolvent and in contemplation of bankruptcy, or (3) that such lien was sought and permitted in fraud of the provisions of this act; or if the dissolution of such lien would militate against the best interests of the estate of such person the same shall not be dissolved, but the trustee of the estate of such person, for the benefit of the estate, shall be subrogated to the rights of the holder of such lien and empowered to perfect and enforce the same in his name as trustee with like force and effect as such holder might have done had not bankruptcy proceedings intervened.

*d Liens given or accepted in good faith and not in contemplation of or in fraud upon this Act, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall, to the extent of such present consideration only, not be affected by this Act.*

*e* That all conveyances, transfers, assignments, or incumbrances of his property, or any part thereof, made or given by a person adjudged a bankrupt under the provisions of this act subsequent to the passage of this act and within four months prior to the filing of the petition, with the intent and purpose on his part to hinder, delay, or defraud his creditors, or any of them, shall be null and void as against the creditors of such debtor, except as to purchasers in good faith and for a present fair consideration; and all property of the debtor conveyed, transferred, assigned, or encumbered as aforesaid shall, if he be adjudged a bankrupt, and the same is not exempt from execution and liability for debts by the law of his domicile, be and remain a part of the assets and estate of the bankrupt and shall pass to his said trustee, whose duty it shall be to recover and reclaim the same by legal proceedings or otherwise for the benefit of the creditors. And all conveyances, transfers, or incumbrances of his property made by a debtor at any time within four months prior to the filing of the petition against him, and while insolvent, which are held null and void as against the creditors of such debtor by the laws of the State, Territory, or District in which such property is situate, shall be deemed null and void under this act against the creditors of such debtor if he be adjudged a bankrupt, and such property shall pass to the assignee and be by him reclaimed and recovered for the benefit of the creditors of the bankrupt. For the purpose of such recovery any court of bankruptcy as hereinbefore defined, and any State court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.

*f* That all levies, judgments, attachments, or other liens, obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien shall be deemed wholly discharged and released from the same, and shall pass to the trustee as a part of the estate of the bankrupt, unless the court shall, on due notice, order that the right under such levy, judgment, attachment or other lien



shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the trustee for the benefit of the estate as aforesaid. And the court may order such conveyance as shall be necessary to carry the purposes of this section into effect: PROVIDED, That nothing herein contained shall have the effect to destroy or impair the title obtained by such levy, judgment, attachment, or other lien, of a bona fide purchaser for value who shall have acquired the same without notice or reasonable cause for inquiry.

**§ 68. Set-offs and Counterclaims.**

*a* In all cases of mutual debts or mutual creditors between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid.

*b* A set-off or counterclaim shall not be allowed in favor of any debtor of the bankrupt which (1) is not provable against the estate; or (2) was purchased by or transferred to him after the filing of the petition, or within four months before such filing, with a view to such use and with knowledge or notice that such bankrupt was insolvent, or had committed an act of bankruptcy.

**§ 69. Possession of Property.**

*a* A judge may, upon satisfactory proof, by affidavit, that a bankrupt against whom an involuntary petition has been filed and is pending has committed an act of bankruptcy, or has neglected or is neglecting, or is about to so neglect his property that it has thereby deteriorated or is thereby deteriorating or is about thereby to deteriorate in value issue a warrant to the marshal to seize and hold it subject to further orders. Before such warrant is issued the petitioners applying therefor shall enter into a bond in such an amount as the judge shall fix, with such sureties as he shall approve, conditioned to indemnify such bankrupt for such damages as he shall sustain in the event such seizure shall prove to have been wrongfully obtained. Such property shall be released, if such bankrupt shall give bond in a sum which shall be fixed by the judge, with such sureties as he shall approve, conditioned to turn over such property, or pay the value thereof in money to the trustee, in the event he is adjudged a bankrupt pursuant to such petition.

**§ 70. Title to Property.**

*a* The trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his or their appointment and qualification shall in turn be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempt, to all (1) documents relating to his property; (2) interests in patents, patent rights, copyrights, and trade-marks; (3) powers which he might have exercised for his own benefit, but not those which he might have exercised for some other person; (4) prop-

erty transferred by him in fraud of his creditors; (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him: *Provided*, That when any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets: and (6) rights of action arising upon contracts or from the unlawful taking or detention of, or injury to, his property.

*b* All real and personal property belonging to bankrupt estates shall be appraised by three disinterested appraisers; they shall be appointed by, and report to, the court. Real and personal property shall, when practicable, be sold subject to the approval of the court; it shall not be sold otherwise than subject to the approval of the court for less than seventy-five per centum of its appraised value.

*c* The title to property of a bankrupt estate which has been sold, as herein provided, shall be conveyed to the purchaser by the trustee.

*d* Whenever a composition shall be set aside, or discharge revoked, the trustee shall, upon his appointment and qualification, be vested as herein provided with the title to all of the property of the bankrupt as of the date of the final decree setting aside the composition or revoking the discharge.

*e* The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a bona fide holder for value. For the purpose of such recovery any court of bankruptcy as hereinbefore defined, and any State court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.

*f* Upon the confirmation of a composition offered by a bankrupt, the title to his property shall thereupon revert in him.

#### § 71.

That the clerks of the several district courts of the United States shall prepare and keep in their respective offices complete and convenient indexes of all petitions and discharges in bankruptcy heretofore or hereafter filed in the said courts, and shall, when requested so to do, issue certificates of search certifying as to whether or not any such petitions or discharges have been filed; and said clerks shall be entitled to receive for such certificates the same fees as now allowed by law for certificates as to judgments



in said courts: *Provided*, That said bankruptcy indexes and dockets, shall at all times be open to inspection and examination by all persons or corporations without any fee or charge therefor.

§ 72.

*That neither the referee, receiver, marshal, nor trustee shall in any form or guise receive, nor shall the court allow him, any other or further compensation for his services than that expressly authorized and prescribed in this Act.*

THE TIME WHEN THIS ACT SHALL GO INTO EFFECT.

**The original act of 1898 provided as follows.**

*a* This act shall go into full force and effect upon its passage: *Provided*, however, That no petition for voluntary bankruptcy shall be filed within one month of the passage thereof, and no petition for involuntary bankruptcy shall be filed within four months of the passage thereof.

*b* Proceedings commenced under State insolvency laws before the passage of this act shall not be affected by it.

**The amendatory act of 1903 provides as follows.**

§ 19.

That the provisions of this amendatory act shall not apply to bankruptcy cases pending when this act takes effect, but such cases shall be adjudicated and disposed of conformably to the provisions of the said act of July first, eighteen hundred and ninety-eight.

**The amendatory act of 1910 provides as follows.**

§ 14.

*That the provisions of this amendatory Act shall not apply to bankruptcy cases pending when this Act takes effect, but such cases shall be adjudicated and disposed of conformably to the provisions of said Act approved July first, eighteen hundred and ninety-eight, as amended by said Act approved February fifth, nineteen hundred and three, and as further amended by said Act approved June fifteenth, nineteen hundred and six.*

*Approved, June 25, 1910.*

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# GENERAL ORDERS IN BANKRUPTCY

ADOPTED BY THE

## SUPREME COURT OF THE UNITED STATES

AT THE OCTOBER TERM, 1898.

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### Preamble.

In pursuance of the powers conferred by the Constitution and laws upon the Supreme Court of the United States, and particularly by the act of Congress approved July 1, 1898, entitled "An act to establish a uniform system of bankruptcy throughout the United States, it is ordered, on this 28th day of November, 1898, that the following rules be adopted and established as general orders in bankruptcy, to take effect on the first Monday, being the second day, of January, 1899. And it is further ordered that all proceedings in bankruptcy had before that day, in accordance with the act last aforesaid, and being in substantial conformity either with the provisions of these general orders, or else with the general orders established by this court under the bankrupt act of 1867 and with any general rules or special orders of the courts in bankruptcy, stand good, subject, however, to such further regulation by rule or order of those courts as may be necessary or proper to carry into force and effect the bankrupt act of 1898 and the general orders of this court.

Cross references: To the law: § 30.

To the General Orders: XXXVII, XXXVIII.

To the Equity Rules: LXXIX. (See, also, Revised Statutes, §§ 913, 914.)

### ILLUSTRATIVE CASES.

The General Orders were only intended to execute the Act, not to add to its provisions.

West Co. v. Lea, 2 Am. B. R. 463; 174 U. S. 590; 43 L. Ed. 1098.

In re Cobb, 7 Am. B. R. 202; 112 Fed. 655.

In re Ingalls Bros., 13 Am. B. R. 512; 137 Fed. 517; 70 C. C. A. 101; rev'd, Orcutt Co. v. Green (U. S. Sup.), 17 Am. B. R. 72; 204 U. S. 96; 51 L. Ed. 390.

In re City Contracting & Bldg. Co., 30 Am. B. R. 133.

### I. Docket.

The clerk shall keep a docket, in which the cases shall be entered and numbered in the order in which they are commenced. It shall contain a memorandum of the filing of the petition and of the action of the court thereon, of the reference of the case to the referee, and of the transmission by him to

the clerk of his certified record of the proceedings, with the dates thereof, and a memorandum of all proceedings in the case except those duly entered on the referee's certified record aforesaid. The docket shall be arranged in a manner convenient for reference, and shall at all times be open to public inspection.

**Cross references:** **To the law:** As to commencement of proceedings, § 1 (10); As to duties of the clerk, §§ 51, 71; As to duties of the referee, §§ 29-c, 39-a (7), 42; As to duties of the trustee, §§ 29-c, 49.

**To the General Orders:** II, IV.

**To the Equity Rules:** I-VI, inclusive.

## II. Filing of Papers.

The clerk or the referee shall indorse on each paper filed with him the day and hour of filing, and a brief statement of its character.

**Cross references:** **To the law:** §§ 18-a, 59-a-b.

**To the General Orders:** VI, IX, XX.

## III. Process.

All process, summons and subpoenas shall issue out of the court, under the seal thereof, and be tested by the clerk; and blanks, with the signature of the clerk and seal of the court, may, upon application, be furnished to the referees.

**Cross references:** **To the law:** As to process in involuntary proceedings, § 18-a (and also under §§ 4 and 5); As to process to witnesses, § 21-a.

**To the General Orders:** VIII.

**To the Equity Rules:** VII to XVI, inclusive.

## ILLUSTRATIVE CASE.

*In re Abbey Press* (C. C. A. 2d Cir.), 13 Am. B. R. 11; 134 Fed. 51; 67 C. C. A. 161.

## IV. Conduct of Proceedings.

Proceedings in bankruptcy may be conducted by the bankrupt in person in his own behalf, or by a petitioning or opposing creditor; but a creditor will only be allowed to manage before the court his individual interest. Every party may appear and conduct the proceedings by attorney, who shall be an attorney or counselor authorized to practice in the circuit or district court. The name of the attorney or counselor, with his place of business, shall be entered upon the docket, with the date of the entry. All papers or proceedings offered by an attorney to be filed shall be indorsed as above required, and orders granted on motion shall contain the name of the party or attorney making the motion. Notices and orders which are not, by the act or by these general orders, required to be served on the party personally may be served upon his attorney.

**Cross references:** **To the law:** As to who may file voluntary petitions, §§ 4-a, 59-a; As to who may file involuntary petitions, § 59-b; As to partnership petitions, § 5; As to petitions against corporations, § 4-b; As to where petitions must



be filed, § 2 (1); As to appearances, §§ 18-b, 59-f; As to answer and other pleas, §§ 18-d, 59; As to notices, § 58.

**To the General Orders:** VI, VIII, IX, XXIII.

**To the Equity Rules:** IV, XVI, and, as to pleadings, generally.

#### ILLUSTRATIVE CASES.

*In re Gasser*, 5 Am. B. R. 32; 104 Fed. 537.

*In re Shaffer*, 4 Am. B. R. 728; 104 Fed. 982.

*In re Herzikopf*, 9 Am. B. R. 90; 118 Fed. 101.

*In re Norton*, 17 Am. B. R. 504; 148 Fed. 301.

*In re Risteen*, 10 Am. B. R. 494; 122 Fed. 732.

*Rogers v. De Sota, etc., Mining Co. (C. C. A.)*, 14 Am. B. R. 252; 136 Fed. 407; 69 C. C. A. 251.

*In re Blankfein*, 3 Am. B. R. 165; 97 Fed. 191.

*L. Meisel & Co. v. Nat. Jewelers' Board of Trade (N. Y. App. Tr.)*, 90 Misc. (N. Y.) 19.

#### V. Frame of Petitions.

All petitions and the schedules filed therewith shall be printed or written out plainly, without abbreviation or interlineation, except where such abbreviation and interlineation may be for the purpose of reference.

**Cross references:** **To the law:** As to petitions, § 18-a-c; As to schedules, § 7 (8); As to referee's duty to examine schedules, etc., § 39-a (2); As to referee's duty to prepare schedules in certain cases, § 39-a (6).

**To the General Orders:** IX, XI.

**To the Equity Rules:** XVIII to XXV.

#### ILLUSTRATIVE CASES.

*Mahoney v. Ward*, 3 Am. B. R. 770; 100 Fed. 278.

*Liesum v. Krauss*, 35 Misc. (N. Y.) 376; 71 N. Y. Supp. 1022.

*Sutherland v. Lasher*, 11 Am. B. R. 780; 41 Misc. (N. Y.) 249; *aff'd*, 87 App. Div. (N. Y.) 633.

*Haack v. Theise*, 16 Am. B. R. 699; 51 Misc. (N. Y.) 3.

#### VI. Petitions in Different Districts.

In case two or more petitions shall be filed against the same individual in different districts, the first hearing shall be had in the district in which the debtor has his domicile, and the petition may be amended by inserting an allegation of an act of bankruptcy committed at an earlier date than that first alleged, if such earlier act is charged in either of the other petitions; and in case of two or more petitions against the same partnership in different courts, each having jurisdiction over the case, the petition first filed shall be first heard, and may be amended by the insertion of an allegation of an earlier act of bankruptcy than that first alleged, if such earlier act is charged in either of the other petitions; and, in either case, the proceedings upon the other petitions may be stayed until an adjudication is made upon the petition first heard; and the court which makes the first adjudication of bankruptcy shall retain jurisdiction over all proceedings therein until the same shall be closed. In case two or more petitions shall be filed in different districts by different

members of the same partnership for an adjudication of the bankruptcy of said partnership, the court in which the petition is first filed, having jurisdiction, shall take and retain jurisdiction over all proceedings in such bankruptcy until the same shall be closed; and if such petitions shall be filed in the same district, action shall be first had upon the one first filed. But the court so retaining jurisdiction shall, if satisfied that it is for the greatest convenience of parties in interest that another of said courts should proceed with the cases, order them to be transferred to that court.

**Cross references:** To the law: As to where petitions may be filed, § 1 (2); As to partnership petitions, § 5; As to transfer of cases, §§ 2 (19), 32; Also generally to §§ 2 (19), 18.

**To the General Orders:** IV, VII, VIII.

#### ILLUSTRATIVE CASES.

- In re Sears, Humbert & Co., 7 Am. B. R. 279; 112 Fed. 58.  
 In re Riggs Restaurant Co., 11 Am. B. R. 508; 130 Fed. 691.  
 In re Tybo Mining & Reduction Co., 13 Am. B. R. 68; 132 Fed. 697.  
 Meaning of "individual."  
 In re United Button Co., 13 Am. B. R. 454; 132 Fed. 378.  
 Domicile.  
 In re Isaacson, 20 Am. B. R. 430; 161 Fed. 779; s. c. 20 Am. B. R. 437.  
 In re Strait, 2 Am. B. R. 308.  
 In re Waxelbaum, 3 Am. B. R. 392; 98 Fed. 589.  
 In re Elmira Steel Co., 5 Am. B. R. 484; 109 Fed. 456.  
 Bradley Timber Co. v. White, 10 Am. B. R. 329; 121 Fed. 779.  
 Gleason v. Smith, Perkins & Co. (C. C. A.), 16 Am. B. R. 602; 145 Fed. 895; 76 C. C. A. 427.  
 Wilder v. Watts, 15 Am. B. R. 57, 68; 138 Fed. 426.  
 In re Hamrick, 23 Am. B. R. 721; 175 Fed. 279.  
 In re Sterne & Levi, 26 Am. B. R. 259; 190 Fed. 70.  
 In re Vanoscope Co. (C. C. A. 2nd Cir.), 36 Am. B. R. 778.

#### VII. Priority of Petitions.

Whenever two or more petitions shall be filed by creditors against a common debtor, alleging separate acts of bankruptcy committed by said debtor on different days within four months prior to the filing of said petitions, and the debtor shall appear and show cause against an adjudication of bankruptcy against him on the petitions, that petition shall be first heard and tried which alleges the commission of the earliest act of bankruptcy; and in case the several acts of bankruptcy are alleged in the different petitions to have been committed on the same day, the court before which the same are pending may order them to be consolidated, and proceed to a hearing as upon one petition; and if an adjudication of bankruptcy be made upon either petition, or for the commission of a single act of bankruptcy, it shall not be necessary to proceed to a hearing upon the remaining petitions, unless proceedings be taken by the debtor for the purpose of causing such adjudication to be annulled or vacated.

**Cross reference:** See those to General Order VI, immediately *ante*.

## ILLUSTRATIVE CASES

*In re* W. G. Harris, 19 Am. B. R. 204; 155 Fed. 216.

*In re* Elmira Steel Co., 5 Am. B. R. 484; 109 Fed. 456.

*In re* New Chattanooga Hardware Co., 27 Am. B. R. 77; 190 Fed. 241.

**VIII. Proceedings in Partnership Cases.**

Any member of a partnership, who refuses to join in a petition to have the partnership declared bankrupt, shall be entitled to resist the prayer of the petition in the same manner as if the petition had been filed by a creditor of the partnership, and notice of the filing of the petition shall be given to him in the same manner as provided by law and by these rules in the case of a debtor petitioned against; and he shall have the right to appear at the time fixed by the court for the hearing of the petition, and to make proof, if he can, that the partnership is not insolvent or has not committed an act of bankruptcy, and to make all defenses which any debtor proceeded against is entitled to take by the provisions of the act; and in case an adjudication of bankruptcy is made upon the petition, such partner shall be required to file a schedule of his debts and an inventory of his property in the same manner as is required by the act in cases of debtors against whom adjudication of bankruptcy shall be made.

**Cross references:** To the law: §§ 5, 18.

To the General Orders: VI, VII.

## ILLUSTRATIVE CASES.

*In re* Murray & Winters, 3 Am. B. R. 90.

*In re* Russell, 3 Am. B. R. 91; 97 Fed. 32.

*In re* Murray et al., 3 Am. B. R. 601; 96 Fed. 600.

*In re* J. M. Ceballos & Co., 20 Am. B. R. 459; 161 Fed. 445; s. c. 20 Am. B. R. 467; 161 Fed. 451.

*In re* Solomon & Carvel, 20 Am. B. R. 488; 163 Fed. 140.

*Dickas v. Barnes*, 15 Am. B. R. 566; 140 Fed. 849; 72 C. C. A. 261.

*In re* Freund, 1 Am. B. R. 25.

*In re* Carleton, 8 Am. B. R. 270; 115 Fed. 246.

*In re* Junck v. Balthazard, 22 Am. B. R. 298; 169 Fed. 481.

*In re* Forbes, 11 Am. B. R. 787; 128 Fed. 137.

*In re* City Contracting & Building Co., 30 Am. B. R. 133.

*In re* Samuels & Lesser (D. C. N. Y.), 30 Am. B. R. 293; 207 Fed. 195; rev'd, 215 Fed. 845.

*In re* J. & M. Schwartz, 30 Am. B. R. 344; 204 Fed. 326.

*Armstrong v. Fisher* (C. C. A. 8th Cir.), 34 Am. B. R. 701.

*In re* Lenoir-Cross & Co., 35 Am. B. R. 774.

*In re* Hansley & Adams, 36 Am. B. R. 1.

**IX. Schedule in Involuntary Bankruptcy.**

In all cases of involuntary bankruptcy in which the bankrupt is absent or cannot be found, it shall be the duty of the petitioning creditor to file, within five days after the date of the adjudication, a schedule giving the names and places of residence of all the creditors of the bankrupt, according to the best

information of the petitioning creditor. If the debtor is found, and is served with notice to furnish a schedule of his creditors and fails to do so, the petitioning creditor may apply for an attachment against the debtor, or may himself furnish such schedule as aforesaid.

**Cross references:** **To the law:** As to bankrupt's duty to file schedules, § 7 (8); As to referee's, § 39-a (6).

**To the General Orders:** V.

#### ILLUSTRATIVE CASE.

Dismissal of petition.

In re Levi & Klauber, 15 Am. B. R. 294; 142 Fed. 962.

### X. Indemnity for Expenses.

Before incurring any expense in publishing or mailing notices, or in traveling, or in procuring the attendance of witnesses, or in perpetuating testimony, the clerk, marshal or referee may require, from the bankrupt or other person in whose behalf the duty is to be performed, indemnity for such expense. Money advanced for this purpose by the bankrupt or other person, shall be repaid him out of the estate as part of the cost of administering the same.

**Cross references:** **To the law:** As to publishing and mailing notices, § 58; As to examinations of the bankrupt or others, §§ 7 (9), 21-a; As to marshal's expenses, § 52; As to clerk's expenses, §§ 52, 71; In general, §§ 62, 64-b (3).

**To the General Orders:** IX, XII, XXII, XXVI, XXXV.

#### ILLUSTRATIVE CASES.

Bankrupt entitled to reimbursement of necessary costs upon application for discharge.

In re Hatcher, 16 Am. B. R. 722; 145 Fed. 658.

In re Burke, 6 Am. B. R. 502.

In re Smith, 5 Am. B. R. 559; 108 Fed. 39.

In re Plimpton, 4 Am. B. R. 614; 103 Fed. 775.

In re Matthews, 3 Am. B. R. 265; 97 Fed. 772.

In re Sanborn, 12 Am. B. R. 131; 131 Fed. 397.

In re Elk Valley Coal Mining Co., 31 Am. B. R. 545; 210 Fed. 386.

In re Loughneay, 34 Am. B. R. 206; 218 Fed. 980.

### XI. Amendments.

The court may allow amendments to the petition and schedules on application of the petitioner. Amendments shall be printed or written, signed and verified, like original petitions and schedules. If amendments are made to separate schedules, the same must be made separately, with proper references. In the application for leave to amend, the petitioner shall state the cause of the error in the paper originally filed.

**Cross references:** **To the law:** §§ 2 (6), (15); § 39-a (2).

**To the Equity Rules:** XXVIII.



## ILLUSTRATIVE CASES.

*In re Goodman* (*Goodman v. Curtis*) (C. C. A. 5th Cir.), 23 Am. B. R. 504; 174 Fed. 644; 98 C. C. A. 398.

*In re Stevenson*, 2 Am. B. R. 66; 94 Fed. 110.

*Burke v. Guarantee Title and Trust Co.* (C. C. A.), 14 Am. B. R. 31; 134 Fed. 562; 67 C. C. A. 486.

*In re Haff*, 13 Am. B. R. 362, 366; 136 Fed. 78; 68 C. C. A. 646.

*In re Portner*, 18 Am. B. R. 89; 149 Fed. 799.

*In re Bellah*, 8 Am. B. R. 310; 116 Fed. 49.

*Gleason v. Smith, Perkins & Co.*, 16 Am. B. R. 602; 145 Fed. 895; 76 C. C. A. 427.

*In re Fisher*, 15 Am. B. R. 654; 142 Fed. 205.

*In re Pure Milk Co. of Mobile*, 18 Am. B. R. 735; 154 Fed. 682.

**XII. Duties of Referee.**

1. The order referring a case to a referee shall name a day upon which the bankrupt shall attend before the referee; and from that day the bankrupt shall be subject to the orders of the court in all matters relating to his bankruptcy, and may receive from the referee a protection against arrest, to continue until the final adjudication on his application for a discharge, unless suspended or vacated by order of the court. A copy of the order shall forthwith be sent by mail to the referee, or be delivered to him personally by the clerk or other officer of the court. And thereafter all the proceedings, except such as are required by the act or by these general orders to be had before the judge, shall be had before the referee.

2. The time when and the place where the referees shall act upon the matters arising under the several cases referred to them shall be fixed by special order of the judge, or by the referee; and at such times and places the referees may perform the duties which they are empowered by the act to perform.

3. Applications for a discharge, or for the approval of a composition, or for an injunction to stay proceedings of a court or officer of the United States, or of a State, shall be heard and decided by the judge. But he may refer such an application, or any specified issue arising thereon, to the referee to ascertain and report the facts.

**Cross references:** To the law: As to general jurisdiction and powers of referee, §§ 38, 39; As to orders of reference, §§ 18-f-g, 22; As to time and place when duties of referee will be performed, § 55; As to limitations on powers of referee, §§ 12-d, 14-b, 38-a (4), 39-b; As to allowance of claims, § 57; As to bankrupt's subjection to orders of court, § 7 (2); As to orders of protection, § 9-a.

**To the General Orders:** IX, XI, XVI, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXIX, XXX, XXXIII, XXXV.

## ILLUSTRATIVE CASES.

*In re Dresser*, 10 Am. B. R. 270; 124 Fed. 915.

*In re Lewensohn*, 3 Am. B. R. 594; 99 Fed. 73.

*In re McDuff*, 4 Am. B. R. 110; 101 Fed. 241.

*National Bank v. Katz*, 1 Am. B. R. 19.



- In re Huddleston, 1 Am. B. R. 572.  
 In re Floerken, 5 Am. B. R. 802; 107 Fed. 241.  
 In re Scott, 7 Am. B. R. 35.  
 In re Rauchenplat, 9 Am. B. R. 763; 1 Porto Rico 471.  
 In re Adler (C. C. A.), 16 Am. B. R. 414; 144 Fed. 659; 75 C. C. A. 461.  
 In re Knopf, 16 Am. B. R. 432; 144 Fed. 245.  
 In re Berkowitz, 16 Am. B. R. 251; 143 Fed. 598.  
 In re Benjamin, 15 Am. B. R. 351, 352; 140 Fed. 320.  
 In re Romine, 14 Am. B. R. 785; 138 Fed. 837.  
 In re Abbey Press (C. C. A.), 13 Am. B. R. 11, 14; 134 Fed. 51; 67 C. C. A. 161.  
 In re Siebert, 13 Am. B. R. 348; 133 Fed. 781.  
 In re Drayton, 13 Am. B. R. 602; 135 Fed. 883.  
 In re Lesser Bros., 5 Am. B. R. 320; rev'd, Metcalf v. Barker, 9 Am. B. R. 36; 187 U. S. 165; 47 L. Ed. 122.  
 In re Steuer, 5 Am. B. R. 209; 104 Fed. 976.  
 In re Sonnabend, 18 Am. B. R. 117.  
 Knapp and Spencer Co. v. Drew, 20 Am. B. R. 355; 160 Fed. 413; 87 C. C. A. 365.  
 In re Wilcox, 19 Am. B. R. 241; 156 Fed. 685.  
 In re Quackenbush, 4 Am. B. R. 274; 102 Fed. 282.  
 In re Roger Brown & Co. (C. C. A. 8th Cir.) 28 Am. B. R. 336; 196 Fed. 758;  
 116 C. C. A. 386.  
 International Harvester Co. v. Carlson (C. C. A. 8th Cir.), 33 Am. B. R. 178; 217 Fed. 736; 133 C. C. A. 430.  
 In re Amer, 35 Am. B. R. 627.  
 In re Tracy, 24 Am. B. R. 539; 179 Fed. 366; 102 C. C. A. 644.  
 In re Monsarrat (No. 1) (D. C. Haw.), 25 Am. B. R. 815.  
 In re Daugherty (D. C. Ky.), 26 Am. B. R. 550; 189 Fed. 239.

### XIII. Appointment and Removal of Trustee.

The appointment of a trustee by the creditors shall be subject to be approved or disapproved by the referee or by the judge; and he shall be removable by the judge only.

**Cross references:** To the law: As to appointment of trustees, §§ 2 (17), 44, 45, 56; As to removal of trustees, § 46.

To the General Orders: XIV, XV, XVI, XVII, XXV.

#### ILLUSTRATIVE CASES.

- In re Kenney & Co., 14 Am. B. R. 611; 136 Fed. 451.  
 In re Hare, 9 Am. B. R. 520; 119 Fed. 246.  
 In re Hanson, 19 Am. B. R. 235; 156 Fed. 417.  
 In re Eastlack, 16 Am. B. R. 529; 145 Fed. 68.  
 Falter v. Reinhard, 4 Am. B. R. 782; 104 Fed. 292.  
 In re Henschel, 6 Am. B. R. 25; s. c. in higher courts, 6 Am. B. R. 305; 109 Fed. 861; 7 Am. B. R. 662; 113 Fed. 443; 51 C. C. A. 277.  
 In re Machin, 11 Am. B. R. 449; 128 Fed. 316.  
 In re Van De Mark, 23 Am. B. R. 760; 175 Fed. 287.  
 In re Cooper, 14 Am. B. R. 320; 135 Fed. 196.  
 In re Blue Ridge Packing Co., 11 Am. B. R. 36; 125 Fed. 619.  
 In re Gordon Supply and Mfg. Co., 12 Am. B. R. 94; 129 Fed. 622.  
 In re Sitting (D. C. N. Y.), 25 Am. B. R. 682; 182 Fed. 917.  
 In re Kreuger, 27 Am. B. R. 440; 196 Fed. 705.  
 In re Clay (C. C. A. 1st Cir.), 27 Am. B. R. 715; 192 Fed. 830; 113 C. C. A. 154.

**XIV. No Official or General Trustee.**

No official trustee shall be appointed by the court, nor any general trustee to act in classes of cases.

**XV. Trustee not Appointed in Certain Cases.**

If the schedule of a voluntary bankrupt discloses no assets and if no creditor appears at the first meeting, the court may, by order setting out the facts, direct that no trustee be appointed; but at any time thereafter a trustee may be appointed, if the court shall deem it desirable. If no trustee is appointed as aforesaid, the court may order that no meeting of the creditors other than the first meeting shall be called.

**Cross references:** To the law: §§ 2 (17), 44, 45, 56. See, also, §§ 6 and 47-a (11), and read § 2 (11).

To the General Orders: XIII, XIV.

## ILLUSTRATIVE CASES.

In re Soper, 1 Am. B. R. 193.

In re Rung Bros., 2 Am. B. R. 620.

Clark v. Pidcock (C. C. A. 3d Cir.), 12 Am. B. R. 309; 129 Fed. 745; 64 C. C. A. 273.

Smalley v. Laugenour, 13 Am. B. R. 692; 196 U. S. 93; 49 L. Ed. 400.

**XVI. Notice to Trustee of His Appointment.**

It shall be the duty of the referee, immediately upon the appointment and approval of the trustee, to notify him in person or by mail of his appointment; and the notice shall require the trustee forthwith to notify the referee of his acceptance or rejection of the trust, and shall contain a statement of the penal sum of the trustee's bond.

**Cross references:** To the law: §§ 44, 50-a, j, k.

To the General Orders: XIII.

**XVII. Duties of Trustee.**

The trustee shall, immediately upon entering upon his duties, prepare a complete inventory of all the property of the bankrupt that comes into his possession. The trustee shall make report to the court, within twenty days after receiving the notice of his appointment, of the articles set off to the bankrupt by him, according to the provisions of the forty-seventh section of the act, with the estimated value of each article, and any creditor may take exceptions to the determination of the trustee within twenty days after the filing of the report. The referee may require the exceptions to be argued before him, and shall certify them to the court for final determination at the request of either party. In case the trustee shall neglect to file any report or statement which it is made his duty to file or make by the act, or by any general order

in bankruptcy, within five days after the same shall be due, it shall be the duty of the referee to make an order requiring the trustee to show cause before the judge, at a time specified in the order, why he should not be removed from office. The referee shall cause a copy of the order to be served upon the trustee at least seven days before the time fixed for the hearing, and proof of the service thereof to be delivered to the clerk. All accounts of trustees shall be referred as of course to the referee for audit, unless otherwise specially ordered by the court.

**Cross references:** To the law: Duties of trustees, in general, §§ 47, 49; As to filing bonds, § 50; As to exemptions, §§ 6, 7 (8), 47-a (11), as perhaps limited by § 2 (11); as to appraisals and sales, § 70-b.

To the General Orders: XVIII, XXI (6), XXV, XXVIII, XXIX, XXXIII, XXXV.

#### ILLUSTRATIVE CASES.

In re Manning, 7 Am. B. R. 571; 112 Fed. 948.

In re White, 4 Am. B. R. 613; 103 Fed. 774.

The bankrupt as well as creditor may except to trustee's report on exempt property.

In re Camp, 1 Am. B. R. 165; 91 Fed. 745.

In re Rung Bros., 2 Am. B. R. 620.

In re Smith, 2 Am. B. R. 190; 93 Fed. 791.

In re Campbell, 10 Am. B. R. 723; 124 Fed. 417.

In re Ellis, 10 Am. B. R. 754.

In re Ingalls Bros., 13 Am. B. R. 512, 515; 137 Fed. 517.

As to setting off exemptions, see, In re McClintock, 13 Am. B. R. 606.

In re Allen, 13 Am. B. R. 518, 521; 134 Fed. 620.

In re Wunder, 13 Am. B. R. 701; 133 Fed. 821.

Trustee a creditor within meaning of this order.

In re Rice, 21 Am. B. R. 202; 164 Fed. 589.

When bankrupt may be denied the right of exemption.

In re Rice (*supra*).

In re Leverton, 19 Am. B. R. 426; 155 Fed. 925.

In re Amos, 19 Am. B. R. 804.

In re White (D. C. Mo.), 6 Am. B. R. 451; 109 Fed. 635.

In re Nunemaker, 30 Am. B. R. 697; 208 Fed. 491.

In re Gerber (C. C. A. 9th Cir.), 26 Am. B. R. 608; 186 Fed. 693; 108 C. C. A. 511.

In re Krecun (C. C. A. 7th Cir.), 36 Am. B. R. 172.

#### XVIII. Sale of Property.

1. All sales shall be by public auction unless otherwise ordered by the court.

2. Upon application to the court, and for good cause shown, the trustee may be authorized to sell any specified portion of the bankrupt's estate at private sale; in which case he shall keep an accurate account of each article sold, and the price received therefor, and to whom sold; which account he shall file at once with the referee.

3. Upon petition by a bankrupt, creditor, receiver, or trustee, setting forth that a part or the whole of the bankrupt's estate is perishable, the nature and location of such perishable estate, and that there will be loss if the same is not sold immediately, the court, if satisfied of the facts stated and that the sale is

required in the interest of the estate, may order the same to be sold, with or without notice to the creditors, and the proceeds to be deposited in court.

**Cross references:** To the law: § 70-b, and as to notices, § 58-a (4).

To the General Orders: None.

#### ILLUSTRATIVE CASES.

In re Carleton, 8 Am. B. R. 270; 115 Fed. 246.

In re Styer, 3 Am. B. R. 424; 98 Fed. 290.

In re Hawkins, 11 Am. B. R. 49; 125 Fed. 633.

In re Edes, 14 Am. B. R. 382; 135 Fed. 595.

In re Abbey Press (C. C. A. 2d Cir.), 13 Am. B. R. 11; 134 Fed. 51; 67 C. C. A.

161.

In re Milne Mfg. Co., 21 Am. B. R. 468.

In re C. F. Beutel's Sons, 7 Am. B. R. 768.

In re Harris, 19 Am. B. R. 635; 156 Fed. 875.

In re Carothers & Co., 27 Am. B. R. 921; 193 Fed. 687.

In re Knox Automobile Co., 210 Fed. 569; 32 Am. B. R. 67.

In re Pedlow (C. C. A. 2d Cir.), 31 Am. B. R. 761; 209 Fed. 841; 126 C. C. A. 565.

In re Nevada-Utah Mines and Smelters Corporation (C. C. A. 2d Cir.), 29 Am. B. R. 754; 202 Fed. 126; 120 C. C. A. 440.

### XIX. Accounts of Marshal.

The marshal shall make return, under oath, of his actual and necessary expenses in the service of every warrant addressed to him, and for custody of property, and other services, and other actual and necessary expenses paid by him, with vouchers therefor whenever practicable, and also with a statement that the amounts charged by him are just and reasonable.

**Cross references:** To the law: §§ 2 (3) (5), 3-e, 52, 69.

To the General Orders: X.

### XX. Papers Filed After Reference.

Proofs of claims and other papers filed subsequently to the reference, except such as call for action by the judge, may be filed either with the referee or with the clerk.

**Cross references:** To the law: As to the duty of referees concerning papers filed with them, § 39-a; As to clerk's duties concerning same, § 51 (3). See, also, § 42-b.

To the General Orders: XXIV.

### XXI. Proof of Debts.

1. Depositions to prove claims against a bankrupt's estate shall be correctly entitled in the court and in the cause. When made to prove a debt due to a partnership, it must appear on oath that the deponent is a member of the partnership; when made by an agent, the reason the deposition is not made by the claimant in person must be stated; and when made to prove a debt due to a corporation, the deposition shall be made by the treasurer, or, if the corporation has no treasurer, by the officer whose duties most nearly correspond to



Page 726, line 1, insert after word "treasurer" the following clause:

If the treasurer or corresponding officer is not within the district wherein the bankruptcy proceedings are pending the deposition may be made by some officer or agent of the corporation having knowledge of the facts.

178. Creditors to prove debts existing in open account shall state when the debt became or will become due; and if it consists of items maturing at different dates the average due date shall be stated, in default of which it shall not be necessary to compute interest upon it. All such depositions shall contain an averment that no note has been received for such account, nor any judgment rendered thereon. Proofs of debt received by any trustee shall be delivered to the referee to whom the cause is referred.

2. Any creditor may file with the referee a request that all notices to which he may be entitled shall be addressed to him at any place, to be designated by the post-office box or street number, as he may appoint; and thereafter, and until some other designation shall be made by such creditor, all notices shall be so addressed: and in other cases notices shall be addressed as specified in the proof of debt.

3. Claims which have been assigned before proof shall be supported by a deposition of the owner at the time of the commencement of proceedings, setting forth the true consideration of the debt, and that it is entirely unsecured, or if secured, the security, as is required in proving secured claims. Upon the filing of satisfactory proof of the assignment of a claim proved and entered on the referee's docket, the referee shall immediately give notice by mail to the original claimant of the filing of such proof of assignment; and, if no objection be entered within ten days, or within further time allowed by the referee, he shall make an order subrogating the assignee to the original claimant. If objection be made, he shall proceed to hear and determine the matter.

4. The claims of persons contingently liable for the bankrupt may be proved in the name of the creditor when known by the party contingently liable. When the name of the creditor is unknown, such claim may be proved in the name of the party contingently liable; but no dividend shall be paid upon such claim, except upon satisfactory proof that it will diminish *pro tanto* the original debt.

5. The execution of any letter of attorney to represent a creditor, or of an assignment of claim after proof, may be proved or acknowledged before a referee, or a United States commissioner, or a notary public. When executed on behalf of a partnership or of a corporation, the person executing the instrument shall make oath that he is a member of the partnership, or a duly authorized officer of the corporation on whose behalf he acts. When the person executing is not personally known to the officer taking the proof or acknowledgment, his identity shall be established by satisfactory proof.

6. When the trustee or any creditor shall desire the re-examination of any claim filed against the bankrupt's estate, he may apply by petition to the referee to whom the case is referred for an order for such re-examination, and thereupon the referee shall make an order fixing a time for hearing the petition, of which due notice shall be given by mail addressed to the creditor. At the time appointed the referee shall take the examination of the creditor, and of any witnesses that may be called by either party, and if it shall appear from



such examination that the claim ought to be expunged or diminished, the referee may order accordingly.

**Cross references:** To the law: As to proof of debts generally, §§ 2 (2), 57; As to provable debts, § 63; As to set-off of debts, §§ 60-c, 68.

**To the General Orders:** XXIV, XXVIII, XXXIII.

#### ILLUSTRATIVE CASES.

- In re Sugenheimer, 1 Am. B. R. 425; 91 Fed. 744.
- In re Scott, 1 Am. B. R. 553; 93 Fed. 418.
- In re Blankfein, 3 Am. B. R. 165; 97 Fed. 191.
- In re Rider, 3 Am. B. R. 192; 96 Fed. 811.
- In re Finlay, 3 Am. B. R. 738; 104 Fed. 675.
- In re Reliance Storage, etc., Co., 4 Am. B. R. 49; 100 Fed. 619.
- In re Doty, 5 Am. B. R. 58.
- In re Chambers, etc., Co., 6 Am. B. R. 709; 98 Fed. 865.
- In re Levy, 7 Am. B. R. 56.
- In re Lyon, 7 Am. B. R. 61.
- In re Blue Ridge Packing Co., 11 Am. B. R. 36; 125 Fed. 619.
- In re Lewensoln, 9 Am. B. R. 368; 121 Fed. 538.
- Fitch v. Richardson (C. C. A.), 16 Am. B. R. 835; 147 Fed. 196; 77 C. C. A. 422.
- In re Columbia Iron Works, 14 Am. B. R. 526, 535; 142 Fed. 234.
- In re Pettingill & Co., 14 Am. B. R. 763.
- Filing claim in hands of trustee.
- In re Ingalls Bros., 13 Am. B. R. 512; 137 Fed. 517.
- In re E. Reboulin Fils & Co., 19 Am. B. R. 215; 165 Fed. 245.
- J. B. Orcutt Co. et al. v. Green (U. S. Sup.), 17 Am. B. R. 72; 204 U. S. 96;
- 51 L. Ed. 390; rev'g 13 Am. B. R. 512.
- In re Stoever, 5 Am. B. R. 250; 105 Fed. 355.
- In re John Osborne's Sons & Co., Inc., 24 Am. B. R. 65; 177 Fed. 184.
- In re Arti-Stain Co., 32 Am. B. R. 640; 216 Fed. 942; aff'd, 32 Am. B. R. 643.
- In re Baker and Edwards, 35 Am. B. R. 469.
- In re Medina Quarry Co., 24 Am. B. R. 769; 179 Fed. 929.
- In re Roy (D. C. N. Y.), 26 Am. B. R. 4; 185 Fed. 551.
- In re Taylor, 26 Am. B. R. 143; 188 Fed. 479.
- In re Goble Boat Co. (D. C. N. Y.), 27 Am. B. R. 48; 190 Fed. 92.
- In re Mexico Hardware Co., 28 Am. B. R. 736; 197 Fed. 650.
- In re Breakwater Co., 36 Am. B. R. 752.

#### XXII. Taking of Testimony.

The examination of witnesses before the referee may be conducted by the party in person or by his counsel or attorney, and the witnesses shall be subject to examination and cross-examination, which shall be had in conformity with the mode now adopted in courts of law. A deposition taken upon an examination before a referee shall be taken down in writing by him, or under his direction, in the form of narrative, unless he determines that the examination shall be by question and answer. When completed it shall be read over to the witness and signed by him in the presence of the referee. The referee shall note upon the deposition any question objected to, with his decision

thereon; and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just.

**Cross references:** To the law: As to examinations, §§ 7 (9), 21, 38-a (2); As to costs, § 2 (18).

To the General Orders: XXII.

To the Equity Rules: XLVI to LVI.

#### ILLUSTRATIVE CASES.

In re Hoyt and Mitchell, 11 Am. B. R. 784; 127 Fed. 968.

Referee must receive all the evidence noting objections and may refuse to stop proceedings and certify questions.

Bank of Ravenswood v. Johnson, 16 Am. B. R. 206; 143 Fed. 463; 74 C. C. A. 597.

In re Sturgeon (C. C. A. 2d Cir.), 14 Am. B. R. 681; 139 Fed. 608; 71 C. C. A. 592.

In re Romine, 14 Am. B. R. 785, 788; 138 Fed. 837.

See, Dowagiac Mfg. Co. v. Lechren, 143 Fed. 211; 74 C. C. A. 341.

See, *contra* In re Samuel Wildes' Sons, 11 Am. B. R. 714.

In re Lipset Co., 9 Am. B. R. 32; 119 Fed. 379.

Dressel v. North State Lumber Co., 9 Am. B. R. 541; 119 Fed. 531.

In re Isaacson, 23 Am. B. R. 665; 175 Fed. 292.

United States v. Liberman, 23 Am. B. R. 734; 176 Fed. 161.

In re Williams (D. C. Tenn.), 10 Am. B. R. 538; 123 Fed. 321.

In re Harrison Bros., 28 Am. B. R. 293; 197 Fed. 320.

In re Waters-Colver Co., 32 Am. B. R. 379; 212 Fed. 761.

In re Kaplan Bros. (C. C. A. 3d Cir.), 32 Am. B. R. 305; 213 Fed. 753; 130 C. C. A. 267.

#### XXIII. Orders of Referee.

In all orders made by a referee, it shall be recited, according as the fact may be, that notice was given and the manner thereof; or that the order was made by consent; or that no adverse interest was represented at the hearing; or that the order was made after hearing adverse interests.

**Cross references:** To the law: Generally.

To the General Orders: IV, XII.

To the Equity Rules: LXXI, LXXII.

#### ILLUSTRATIVE CASES.

T. S. Faulk & Co. v. Steiner et al., 21 Am. B. R. 623; 165 Fed. 861; 91 C. C. A. 547.

In re Abbey Press (C. C. A. 2d Cir.), 13 Am. B. R. 11; 134 Fed. 51; 67 C. C. A. 161.

Armstrong v. Fisher (C. C. A. 8th Cir.), 34 Am. B. R. 701.

McCulloch v. Davenport Savings Bank, 35 Am. B. R. 765.

#### XXIV. Transmission of Proved Claims to Clerk.

The referee shall forthwith transmit to the clerk a list of the claims proved against an estate, with the names and addresses of the proving creditors.

**Cross references:** To the law: §§ 39-a, 57.

To the General Orders: XII, XX.

**XXV. Special Meeting of Creditors.**

Whenever, by reason of a vacancy in the office of trustee, or for any other cause, it becomes necessary to call a special meeting of the creditors in order to carry out the purposes of the act, the court may call such a meeting, specifying in the notice the purpose for which it is called.

**Cross references:** To the law: As to meetings of creditors, § 55; As to meetings for choice of new trustee, § 44; As to notices of meetings, § 58.

To the General Orders: XIII.

**ILLUSTRATIVE CASE.**

In re Lewensohn, 3 Am. B. R. 299; 98 Fed. 576.

**XXVI. Accounts of Referee.**

Every referee shall keep an accurate account of his traveling and incidental expenses, and of those of any clerk or any officer attending him in the performance of his duties in any case which may be referred to him; and shall make return of the same under oath to the judge, with proper vouchers when vouchers can be procured, on the first Tuesday in each month.

**Cross references:** To the law: § 42.

To the General Orders: X, XXXV (2), and, by analogy, XIX.

**ILLUSTRATIVE CASES.**

In re Todd, 6 Am. B. R. 88; 109 Fed. 265.

In re Mammoth Pine Lumber Co., 8 Am. B. R. 651; 116 Fed. 731.

In re Daniels, 12 Am. B. R. 446; 130 Fed. 597.

In re C. J. McCubbin Co., 33 Am. B. R. 277; 42 Wash. Law. Rep. 744.

**XXVII. Review by Judge.**

When a bankrupt, creditor, trustee, or other person shall desire a review by the judge of any order made by the referee he shall file with the referee, his petition therefor, setting out the error complained of; and the referee shall forthwith certify to the judge the question presented, a summary of the evidence relating thereto, and the finding and order of the referee thereon.

**Cross references:** To the law: §§ 2 (10), 38-a, 39-a (5).

To the General Orders: By analogy, XXXVI.

**ILLUSTRATIVE CASES.**

In re Schiller, 2 Am. B. R. 704; 96 Fed. 400.

In re Scott, 3 Am. B. R. 625; 99 Fed. 404.

Cunningham v. German Ins. Bank, 4 Am. B. R. 192; 103 Fed. 932; 43 C. C. A. 377.

In re Chambers, 6 Am. B. R. 709.

In re De Gottardi, 7 Am. B. R. 723; 114 Fed. 328.

In re Koenig, 11 Am. B. R. 617; 127 Fed. 891; aff'd, 133 Fed. 1019; 66 C. C. A. 125.

Allgair v. Fisher & Co., 16 Am. B. R. 278; 143 Fed. 962; 75 C. C. A. 148.  
 Bank of Ravenswood v. Johnson, 16 Am. B. R. 206; 143 Fed. 463; 74 C. C. A. 597.  
 In re Pettingill, 15 Am. B. R. 757, 761; 135 Fed. 218.  
 In re Foss, 17 Am. B. R. 439; 147 Fed. 790.  
 In re Henschel, 12 Am. B. R. 31.  
 In re Kurtz, 11 Am. B. R. 129; 125 Fed. 992.  
 In re Russell, 5 Am. B. R. 566.  
 In re Hoyt and Mitchell, 11 Am. B. R. 784; 127 Fed. 968.  
 In re Home Discount Co., 17 Am. B. R. 168; 147 Fed. 538.  
 In re Grant, 16 Am. B. R. 256; 143 Fed. 661.  
 In re Romine, 14 Am. B. R. 785, 789; 138 Fed. 837.  
 In re Abbey Press (C. C. A. 2d Cir.), 13 Am. B. R. 11; 134 Fed. 51; 67 C. C. A. 161.  
 A referee may not review his own order upon exceptions thereto.  
 In re Greek Mfg. Co. (D. C. Pa.), 21 Am. B. R. 111; 164 Fed. 211.  
 Referee must summarize the evidence.  
 Crim v. Woodford (C. C. A. 4th Cir.), 14 Am. B. R. 302, 304; 136 Fed. 34; 68 C.

C. A. 584.

In re Fisher, 14 Am. B. R. 366; 135 Fed. 223.  
 In re Reukauff Sons & Co. (Inc.), 14 Am. B. R. 344; 135 Fed. 251.  
 In re Clark Coal and Coke Co., 23 Am. B. R. 273; 173 Fed. 658.  
 Knapp and Spencer Co. v. Drew, 20 Am. B. R. 355; 160 Fed. 413; 87 C. C. A. 365.  
 First Nat. Bank v. Pearcey, 133 Fed. 1019; 66 C. C. A. 125.  
 In re Marks (D. C. Pa.), 22 Am. B. R. 568; 171 Fed. 281.  
 Craddock-Terry Co. v. Kaufman, 23 Am. B. R. 724; 175 Fed. 303.  
 In re Kelly Dry Goods Co., 4 Am. B. R. 528; 102 Fed. 747.  
 West v. W. A. McLaughlin & Co., 20 Am. B. R. 654; 162 Fed. 124; 89 C. C. A. 124.  
 In re T. M. Leshner & Son, 25 Am. B. R. 218; 176 Fed. 650.  
 In re Octave Mining Co., 32 Am. B. R. 474; 212 Fed. 457.  
 In re Arti-Stain Co., 32 Am. B. R. 640; 216 Fed. 942; aff'd, 32 Am. B. R. 643.  
 In re Nippon Trading Co., 25 Am. B. R. 695; 182 Fed. 959.  
 In re Verdon Cigar Co., 27 Am. B. R. 56; 193 Fed. 813.  
 In re Carlile, 29 Am. B. R. 373; 199 Fed. 612.

### XXVIII. Redemption of Property and Compounding of Claims.

Whenever it may be deemed for the benefit of the estate of a bankrupt to redeem and discharge any mortgage or other pledge, or deposit or lien, upon any property, real or personal, or to relieve said property from any conditional contract, and to tender performance of the conditions thereof, or to compound and settle any debts or other claims due or belonging to the estate of the bankrupt, the trustee, or the bankrupt, or any creditor who has proved his debt, may file his petition therefor; and thereupon the court shall appoint a suitable time and place for the hearing thereof, notice of which shall be given as the court shall direct, so that all creditors and other persons interested may appear and show cause, if any they have, why an order should not be passed by the court upon the petition authorizing such act on the part of the trustee.

**Cross references:** To the law: As to redemption of property from liens, none, save by analogy, §§ 2 (7), 67; As to compounding of claims, §§ 27, 58-a (7), and, by analogy, § 26.

To the General Orders: XXXIII.



## ILLUSTRATIVE CASES.

In re Mammoth Pine Lumber Co., 8 Am. B. R. 651; 116 Fed. 731.

In re Wolf & Levy, 10 Am. B. R. 153; 122 Fed. 127.

In re Grainger, 20 Am. B. R. 166; 160 Fed. 69.

**XXIX. Payment of Moneys Deposited.**

No moneys deposited as required by the act shall be drawn from the depository unless by check or warrant, signed by the clerk of the court, or by a trustee, and countersigned by the judge of the court, or by a referee designated for that purpose, or by the clerk or his assistant under an order made by the judge, stating the date, the sum, and the account for which it is drawn; and an entry of the substance of such check or warrant, with the date thereof, the sum drawn for, and the account for which it is drawn, shall be forthwith made in a book kept for that purpose by the trustee or his clerk; and all checks and drafts shall be entered in the order of time in which they are drawn, and shall be numbered in the case of each estate. A copy of this general order shall be furnished to the depository, and also the name of any referee or clerk authorized to countersign said checks.

**Cross references:** To the law: §§ 47-a, 61.

## ILLUSTRATIVE CASES.

In re Cobb, 7 Am. B. R. 202; 112 Fed. 655.

In re Hoyt, 9 Am. B. R. 574; 119 Fed. 987.

Huttig Mfg. Co. v. Edwards, 20 Am. B. R. 349; 160 Fed. 619; 87 C. C. A. 521.

In re Carr, 9 Am. B. R. 58; 117 Fed. 572.

In re Hoyt & Mitchell, 11 Am. B. R. 784; 127 Fed. 968.

**XXX. Imprisoned Debtor.**

If, at the time of preferring his petition, the debtor shall be imprisoned, the court, upon application, may order him to be produced upon *habeas corpus*, by the jailer or any officer in whose custody he may be, before the referee, for the purpose of testifying in any matter relating to his bankruptcy; and, if committed after the filing of his petition upon process in any civil action founded upon a claim provable in bankruptcy, the court may, upon like application, discharge him from such imprisonment. If the petitioner, during the pendency of the proceedings in bankruptcy, be arrested or imprisoned upon process in any civil action, the district court, upon his application, may issue a writ of *habeas corpus* to bring him before the court to ascertain whether such process has been issued for the collection of any claim provable in bankruptcy, and if so provable he shall be discharged; if not, he shall be remanded to the custody in which he may lawfully be. Before granting the order for discharge the court shall cause notice to be served upon the creditor or his attorney, so as to give him an opportunity of appearing and being heard before the granting of the order.



Cross references: To the law: § 9-a.

To the General Orders: XII (1).

#### ILLUSTRATIVE CASES.

- In re Marcus, 5 Am. B. R. 365; 105 Fed. 907.  
 In re Claiborne, 5 Am. B. R. 812; 109 Fed. 74.  
 In re Fife, 6 Am. B. R. 258; 109 Fed. 880.  
 Barrett v. Prince (C. C. A.), 16 Am. B. R. 64; 143 Fed. 302; 74 C. C. A. 440.  
 In re Adler, 16 Am. B. R. 414; 144 Fed. 659.  
 People ex rel. Taranto v. Erlanger, 13 Am. B. R. 197; 132 Fed. 883.  
 In re Dresser, 10 Am. B. R. 270; 124 Fed. 915; aff'd, 135 Fed. 495; 68 C. C. A. 207 and 200 U. S. 532; 50 L. Ed. 584.  
 In re Lewensohn, 3 Am. B. R. 594; 99 Fed. 73.  
 In re Hilton, 4 Am. B. R. 774; 104 Fed. 981.  
 In re Baker, 3 Am. B. R. 101; 96 Fed. 954.  
 Knott v. Putnam, 6 Am. B. R. 80; 107 Fed. 907.

### XXXI. Petition for Discharge.

The petition of a bankrupt for a discharge shall state concisely, in accordance with the provisions of the act and the orders of the court, the proceedings in the case and the acts of the bankrupt.

Cross references: To the law: §§ 14, 18-c.

To the General Orders: XXXII.

#### ILLUSTRATIVE CASES.

- In re Soper & Slada, 1 Am. B. R. 193.  
 In re Glass, 9 Am. B. R. 391; 119 Fed. 509.

### XXXII. Opposition to Discharge or Composition.

A creditor opposing the application of a bankrupt for his discharge, or for the confirmation of a composition, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall file a specification in writing of the grounds of his opposition within ten days thereafter, unless the time shall be enlarged by special order of the judge.

Cross references: To the law: §§ 12, 14.

To the General Orders: IV, XXXI.

#### ILLUSTRATIVE CASES.

- In re Clothier, 6 Am. B. R. 203; 108 Fed. 199.  
 In re Gasser, 5 Am. B. R. 32; 104 Fed. 537.  
 In re Albrecht, 5 Am. B. R. 223; 104 Fed. 974.  
 Adler v. Jones, 6 Am. B. R. 245; 109 Fed. 967.  
 Ross v. Saunders, 5 Am. B. R. 350; 105 Fed. 915; 45 C. C. A. 123.  
 In re Holman, 1 Am. B. R. 600; 92 Fed. 512.  
 In re Hixon, 1 Am. B. R. 610; 93 Fed. 440.  
 In re Grant, 14 Am. B. R. 398; 135 Fed. 889.

- In re Ginsburg, 12 Am. B. R. 459; 130 Fed. 627.  
 In re Levey, 13 Am. B. R. 312; 133 Fed. 572.  
 In re J. J. Young, 20 Am. B. R. 697; 162 Fed. 912.  
 In re Nathanson, 18 Am. B. R. 252; 152 Fed. 585.  
 In re Osborne, 8 Am. B. R. 165; 115 Fed. 1; 52 C. C. A. 595.  
 In re Levin, 23 Am. B. R. 845; 176 Fed. 177; 99 C. C. A. 531.  
 In re C. H. Kendrick & Co., 35 Am. B. R. 630; 226 Fed. 980.  
 Shaffer v. The Koblegard Co. (C. C. A. 4th Cir.), 24 Am. B. R. 898; 183 Fed. 71;  
 105 C. C. A. 363.  
 In re Barrager, 27 Am. B. R. 366; 191 Fed. 247.  
 In re Johnson, 27 Am. B. R. 644; 192 Fed. 356.  
 In re Magen Bros. Co. (C. C. A. 3d Cir.), 27 Am. B. R. 729; 192 Fed. 883; 113  
 C. C. A. 207.

### XXXIII. Arbitration.

Whenever a trustee shall make application to the court for authority to submit a controversy arising in the settlement of a demand against a bankrupt's estate, or for a debt due to it, to the determination of arbitrators, or for authority to compound and settle such controversy by agreement with the other party, the application shall clearly and distinctly set forth the subject-matter of the controversy, and the reasons why the trustee thinks it proper and most for the interest of the estate that the controversy should be settled by arbitration or otherwise.

**Cross references:** To the law: §§ 26, 58-a (7), and, by analogy, § 27.

To the General Orders: By analogy, XXVIII.

### ILLUSTRATIVE CASE.

In re Hixon, 1 Am. B. R. 610; 93 Fed. 440.

### XXXIV. Costs in Contested Adjudications.

In cases of involuntary bankruptcy, when the debtor resists an adjudication, and the court, after hearing, adjudges the debtor a bankrupt, the petitioning creditor shall recover, and be paid out of the estate, the same costs that are allowed to a party recovering in a suit in equity; and if the petition is dismissed, the debtor shall recover like costs against the petitioner.

**Cross references:** To the law: §§ 2 (18), 3-e.

To the General Orders: By analogy, X.

### ILLUSTRATIVE CASES.

- In re Ghiglione, 1 Am. B. R. 580; 93 Fed. 186.  
 In re Philadelphia and Lewes Transportation Co., 11 Am. B. R. 444; 127 Fed. 896.  
 Selkregg v. Hamilton, 16 Am. B. R. 474; 144 Fed. 557.  
 In re Hines, 16 Am. B. R. 538; 144 Fed. 142.  
 Hoffschlaeger Co. v. Young Nap, 12 Am. B. R. 526.  
 In re Barnet, 12 Am. B. R. 626; 113 Fed. 107.  
 In re Wise, 32 Am. B. R. 510; 212 Fed. 567.  
 In re McKenzie, 34 Am. B. R. 111; 219 Fed. 630.  
 In re Ward (D. C. N. J.), 29 Am. B. R. 547; 203 Fed. 769.

**XXXV. Compensation of Clerks, Referees and Trustees.**

1. The fees allowed by the act to clerks shall be in full compensation for all services performed by them in regard to filing petitions or other papers required by the act to be filed with them, or in certifying or delivering papers or copies of records to referees or other officers, or in receiving or paying out money; but shall not include copies furnished to other persons, or expenses necessarily incurred in publishing or mailing notices or other papers.

2. The compensation of referees, prescribed by the act, shall be in full compensation for all services performed by them under the act, or under these general orders; but shall not include expenses necessarily incurred by them in publishing or mailing notices, in traveling, or in perpetuating testimony, or other expenses necessarily incurred in the performance of their duties under the act and allowed by special order of the judge.

3. The compensation allowed to trustees by the act shall be in full compensation for the services performed by them; but shall not include expenses necessarily incurred in the performance of their duties and allowed upon the settlement of their accounts.

4. In any case in which the fees of the clerk, referee and trustee are not required by the act to be paid by a debtor before filing his petition to be adjudged a bankrupt, the judge, at any time during the pendency of the proceedings in bankruptcy, may order those fees to be paid out of the estate; or may, after notice to the bankrupt, and satisfactory proof that he then has or can obtain the money with which to pay those fees, order him to pay them within a time specified, and, if he fails to do so, may order his petition to be dismissed. He may also, pending such proceedings, both in voluntary and involuntary cases, order the commissions of referees and trustees to be paid immediately after such commissions accrue and are earned.

**Cross references:** **To the law:** As to compensation of clerks, §§ 52, 71. As to compensation of referees, §§ 40, 72. As to compensation of trustees, §§ 48, 72. As to pauper cases, § 51-a (2).

**To the General Orders:** X, XII, XVII, XIX, XXVI, XXIX.

**ILLUSTRATIVE CASES.**

*In re Collier*, 1 Am. B. R. 182; 93 Fed. 191.

*In re Langslow*, 1 Am. B. R. 258; 98 Fed. 869.

*In re Felson*, 15 Am. B. R. 185, 194; 139 Fed. 275.

*In re Pierce*, 6 Am. B. R. 747.

*In re Epstein*, 6 Am. B. R. 191; 109 Fed. 878.

*In re Plimpton*, 4 Am. B. R. 614; 103 Fed. 775.

Compensation of referee.

*Bray, Trustee v. Johnson, Referee, et al.* (C. C. A. 4th Cir.), 21 Am. B. R. 383; 166 Fed. 57; 91 C. C. A. 643.

Trustee's expenses.

*In re Hart & Co.*, 17 Am. B. R. 480.

*In re Wilcox*, 19 Am. B. R. 241; 156 Fed. 685.

Fees of clerks.

In re Dunn Hardware and Furniture Co., 14 Am. B. R. 186; 134 Fed. 997.  
 In re Screws, 17 Am. B. R. 269; 147 Fed. 989.  
 Dressel v. North State Lumber Co., 9 Am. B. R. 541; 119 Fed. 531.  
 In re Dixon, 8 Am. B. R. 145; 114 Fed. 675.  
 Sellers v. Bell, 2 Am. B. R. 529; 94 Fed. 801.  
 In re Elk Valley Coal Mining Co., 32 Am. B. R. 197; 213 Fed. 383.  
 In re C. J. McCubbin Co., 33 Am. B. R. 277; 42 Wash. Law Rep. 744.  
 In re Loughney, 34 Am. B. R. 206; 218 Fed. 980.  
 In re Lacey & Co., 35 Am. B. R. 231; 43 Wash. Law Rep. 434.  
 In re Schreiber, 35 Am. B. R. 241.  
 In re Langford Felts & Myers, 35 Am. B. R. 519.  
 In re Iwanaga (D. C. Haw.), 36 Am. B. R. 285.

### XXXVI. Appeals.

1. Appeals from a court of bankruptcy to a circuit court of appeals, or to the supreme court of a Territory, shall be allowed by a judge of the court appealed from or of the court appealed to, and shall be regulated, except as otherwise provided in the act, by the rules governing appeals in equity in the courts of the United States.

2. Appeals under the act to the Supreme Court of the United States, from a circuit court of appeals, or from a supreme court of a Territory, or from the Supreme Court of the District of Columbia, or from any court of bankruptcy whatever, shall be taken within thirty days after the judgment or decree, and shall be allowed by a judge of the court appealed from, or by a justice of the Supreme Court of the United States.

3. In every case in which either party is entitled by the act to take an appeal to the Supreme Court of the United States, the court from which the appeal lies shall, at or before the time of entering its judgment or decree, make and file a finding of the facts, and its conclusions of law thereon, stated separately; and the record transmitted to the Supreme Court of the United States on such an appeal shall consist only of the pleadings, the judgment or decree, the finding of facts, and the conclusions of law.

**Cross references:** To the law: §§ 24, 25.

To the General Orders: By analogy XXVII.

Page 735, line 34:

See Act of Jan. 28, 1915, 38 Stat. at L. ch. 22, pp. 803, 804, restricting appeals to U. S. Supreme Court.

In re Rauchenplatt, 9 Am. B. R. 763; 1 Porto Rico 471.

First National Bank of Denver et al. v. Klug, 8 Am. B. R. 12; 186 U. S. 202; 46 L. Ed. 1127.

Crucible Steel Co. of America v. Holt, 23 Am. B. R. 302; 174 Fed. 127; 98 C. C. A. 101; aff'd, 224 U. S. 262.

Ross et al. v. Stroh, 21 Am. B. R. 644; 165 Fed. 628; 91 C. C. A. 616.

Chauman, Trustee, etc. v. Bowen (U. S. Sup.), 18 Am. B. R. 844; 207 U. S. 89; 52 L. Ed. 116.

Conboy v. National Bank (U. S. Sup.), 16 Am. B. R. 773; 203 U. S. 141; 51 L. Ed. 128.

Section 3.



- Knapp v. Milwaukee Trust Co., 20 Am. B. R. 671; 162 Fed. 675; s. c. (U. S. Sup.) 30 Sup. Ct. Rep. 412; 24 Am. B. R. 761; 216 U. S. 545; 54 L. Ed. 610.  
 Hiscock v. Varick Bank of New York, 18 Am. B. R. 1; 206 U. S. 28; 51 L. Ed. 945.  
 Armstrong v. Fernandez et al., 19 Am. B. R. 746; 208 U. S. 324; 52 L. Ed. 514.  
 In re Philip Semner Glass Co., 135 Fed. 77; 67 C. C. A. 551; dismissed, 203 U. S. 141; 51 L. Ed. 128.  
 Houghton v. Burden (U. S. Sup.), 30 Am. B. R. 16; 228 U. S. 161; 57 L. Ed. 780.  
 Baker Ice Machine Co. v. Bailey (C. C. A. 8th Cir.), 31 Am. B. R. 513; 209 Fed. 844; 126 C. C. A. 568.  
 Century Savings Bank v. Robert Moody & Son (C. C. A. 8th Cir.), 31 Am. B. R. 586; 209 Fed. 775; 126 C. C. A. 499.  
 Washington v. Tearney (C. C. A. 4th Cir.), 28 Am. B. R. 633; 197 Fed. 307; 117 C. C. A. 53.

### XXXVII. General Provisions.

In proceedings in equity, instituted for the purpose of carrying into effect the provisions of the act, or for enforcing the rights and remedies given by it, the rules of equity practice established by the Supreme Court of the United States shall be followed as nearly as may be. In proceedings at law, instituted for the same purpose, the practice and procedure in cases at law shall be followed as nearly as may be. But the judge may, by special order in any case, vary the time allowed for return of process, for appearance and pleading, and for taking testimony and publication, and may otherwise modify the rules for the preparation of any particular case so as to facilitate a speedy hearing.

#### ILLUSTRATIVE CASES.

- In re Fleischer, 18 Am. B. R. 194; 151 Fed. 81.  
 In re Hark Bros., 14 Am. B. R. 400; 135 Fed. 603.  
 In re Lipsett, Levittan & Co., 9 Am. B. R. 32; 119 Fed. 379.  
 In re Waugh (C. C. A. 9th Cir.), 13 Am. B. R. 187; 133 Fed. 281; 66 C. C. A. 659.  
 In re Docker-Foster Co., 10 Am. B. R. 584; 123 Fed. 190.  
 Ex parte Steele, 20 Am. B. R. 575; 162 Fed. 694.  
 In re Kenney & Co., 14 Am. B. R. 611; 136 Fed. 451.  
 In re Jones, 31 Am. B. R. 693; 209 Fed. 717.  
 International Harvester Co. v. Carlson (C. C. A. 8th Cir.), 33 Am. B. R. 178; 217 Fed. 736; 133 C. C. A. 430.  
 In re Cunney, 35 Am. B. R. 617.  
 In re T. A. McIntyre & Co. (C. C. A. 2d Cir.), 24 Am. B. R. 4; 176 Fed. 552; 100 C. C. A. 140.

### XXXVIII. Forms.

The several forms annexed to these general orders shall be observed and used, with such alterations as may be necessary to suit the circumstances of any particular case.

#### ILLUSTRATIVE CASES.

- Burke v. Guarantee Title and Trust Co., 14 Am. B. R. 31; 134 Fed. 562; 67 C. C. A. 486.  
 In re Laskaris, 1 Am. B. R. 480.  
 In re Soper and Slada, 1 Am. B. R. 193.  
 In re Lenters (D. C. Pa.), 35 Am. B. R. 3.  
 In re Farthing (D. C. No. Car.), 29 Am. B. R. 732; 202 Fed. 557.



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**RULES OF THE DISTRICT COURTS  
IN BANKRUPTCY.**

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[737]



## **SOUTHERN DISTRICT OF NEW YORK.**

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### **RULE I.**

#### **Petitions.**

Petitions should state where the debtor has resided, including the street and number, if any, and also where his principal place of business, if any, has been during the preceding six months, or the greater part thereof; and the schedules, as respects creditors in the city of New York, should state the street and number of their residence, or place of business, so far as known.

Petitions by one or more of several copartners should state, in case a discharge from copartnership debts is desired, whether there are firm assets, and, if there are, the petition should further state whether the firm and any other partners not joining in the petition are solvent or insolvent, and, if insolvent, the place of residence and whereabouts of such other partners, so far as known, or ascertainable, in order that they may be brought in as parties in case they refuse to join in the petition. Petitions and other papers filed, except schedules, shall be upon law cap, not more than nine inches wide by fourteen inches long.

### **RULE II.**

#### **Laches.**

In case of unreasonable delay in the bankruptcy proceedings after an injunction or stay of any other proceeding has been granted, application may be made on any motion day in bankruptcy, on five days' notice, to dissolve the stay, though the time limited in the order granting the stay has not expired.

### **RULE III.**

#### **Publication of Notices.**

Notices for the first meeting of creditors shall be published once only unless otherwise ordered.

### **RULE IV.**

#### **Newspapers for Official Advertising.**

The following newspapers are designated in pursuance of section 28 of the Act, for publication of notices and orders:

In New York County — "The New York Times."

In Bronx County — "The North Side News."

In Westchester County — "Yonkers Statesman."

In Putnam County — "The Putnam County Republican."

In Dutchess County — "The Poughkeepsie Daily Eagle."

In Columbia County — "The Columbia Republican."

In Greene County — "The Catskill Mail."

In Sullivan and Ulster Counties — "The Kingston Daily Freeman."

In Orange County — "The Newburgh Journal."

In Rockland County — "The Nyack Evening Journal."

**RULE V.****Depositories.**

Banking institutions as depositories for moneys of bankrupt estates shall be designated by orders entered for that purpose, and the Clerk shall keep a list of authorized depositories open to the inspection of the public.

**RULE VI.****Checks and Warrants.**

The Referee before whom a case is pending is designated as the one to countersign all warrants and checks for the withdrawal of money from the depository under Rule 29 of the General Orders, unless otherwise specially ordered by a Judge.

**RULE VII.****Applications for Discharge, and Compositions.**

Applications for the discharge of the bankrupt, or for confirmation of a composition, duly verified, should be filed in the first instance with the Referee in charge, who will thereupon fix a day for the hearing before the Judge, which may be upon any Bankruptcy Motion day at 10:30 a. m., and give the requisite notices thereof to all creditors or other persons interested, and thereafter transmit to the Clerk of the Court three days prior to the return day, due proof of the service of such notices, together with the petition for discharge or composition and a certificate or report of the Referee as to the fact whether the bankrupt has in all things conformed to the requirements of the Act, and has committed none of the offenses and done none of the acts prohibited in subdivision B of section 14, and whether the bankrupt in the opinion of the Referee is entitled to his discharge. On the return day, the default of all creditors not appearing in opposition to the discharge or composition shall be entered. Upon due filing of written specifications of the grounds of opposition to the discharge or composition, the same shall be referred to the Referee in charge to take the proofs and testimony offered by the parties, and to ascertain and report the facts. The hearing thereon before the Referee may be brought on by any party on five days' notice thereof to the attorneys of the other parties.

**RULE VIII.****Opposition to Discharge.**

On the return day of the application for discharge or composition the default of all creditors not appearing in opposition thereto shall be entered. If there is no appearance in opposition the bankrupt, if he appears to be entitled thereto, shall be forthwith discharged, or the composition allowed. If any appearance in opposition is filed the bankrupt, who must be personally present, may be examined *instantly* if desired by the parties appearing, and specifications in opposition to the discharge must be verified, and filed in the Clerk's office, as required, within ten days after the said return day, and the further hearing on the discharge shall stand adjourned two weeks from the return day at the same hour.

On such adjourned day any exceptions to the relevancy or sufficiency of the specifications in opposition to the discharge shall be summarily heard. If the specifications are not excepted to, or if upon exception they are sustained, the same shall be referred to the Referee in charge to take the proofs and testimony offered by the parties, and to ascertain and report the facts. The hearing thereon before the Referee may be brought on by either party on five days' notice thereof to the attorney of the other. After the filing of the Referee's report thereon the further hearing before the Judge may be had on any Bankruptcy Motion day, on five days' written notice to the parties who have appeared.

**RULE IX.**

**Closing Cases and Vacation of Stay.**

Where there are no assets and no trustee has been appointed, and no application for a trustee is pending, after a meeting of creditors duly called, the case shall be deemed closed for the purpose of the payment by the Clerk to the Referee of the deposit for his services, when a discharge has been granted or refused to the bankrupt, or when three months have elapsed after the first meeting of creditors without any application by the bankrupt for his discharge.

Where a trustee has been appointed the case shall be deemed closed, and the deposit for his services paid to him on the confirmation of a composition, or on approval of the trustee's final account, and payment of the final dividend, or upon the trustee's verified report that no assets have come into his hands or were discoverable. When the case is closed, if no trustee has been appointed, the deposit for trustee's services shall be paid by the Clerk to the petitioner's attorney.

If no meeting of creditors has been held, the case shall be deemed closed at the expiration of one year from the date of adjudication, and any stay granted thereon shall thereupon be deemed vacated unless otherwise ordered by the Court.

**RULE X.**

**Accounting for Indemnity.**

The Referee's certificate that the case is closed must be accompanied by an itemized statement of the sums deposited with him as indemnity, and of the items of charges against the same with the dates thereof, and of the balance remaining, if any; and upon the receipt of such statement, together with a certificate that the case is closed, the deposit shall be paid over by the Clerk.

**RULE XI.**

**Notices, Method of Mailing.**

All notices mailed by Referees to creditors shall have printed upon the envelope inclosing the notice the name and address of the Referee, with direction to return the same to him if the person addressed is not found within ten days. Returned notices or a list thereof shall be preserved and reported as required.

**RULE XII.**

**Referees' Expenses, How Reimbursed.**

Referees' drafts or orders upon the trustee for the payment of money to themselves, are allowed only for the expenses already incurred, and shall be accompanied by duplicate vouchers to the trustee stating the items of the expenses, payment of which is called for; and one of such vouchers shall upon payment be forthwith filed by the trustee in the Clerk's office.

**RULE XIII.**

**Delay in Hearings, Procedure on.**

If the hearing before the Referee on specifications of objection to discharge or composition is not begun within one month after the specifications of objection are referred to the Referee, or if, after the hearing is begun, there is unreasonable delay by the bankrupt in carrying on and completing such hearing, the Referee is directed to certify such facts to the Court; and thereupon, upon notice to the bankrupt, an application to dismiss the petition may be made.



**RULE XIV.****Sureties, Insolvency of.**

In all cases where a bond is taken for the delivery of property upon claim therefor, if either of the sureties shall become insolvent pending the proceeding, a new surety may be required to be given by order of the Court.

**RULE XV.****Petitions for Review, Limitation of Time for.**

A petition for review of a Referee's order must be filed with the Referee within ten days after the order is made, unless such time is extended before or after expiration of said ten days, by the Referee or the Court.

**RULE XVI.****Official Auctioneer.**

An official auctioneer shall be designated by this Court, who may be removed by it at any time. Such auctioneer shall provide an adequate warehouse and shall receive and store in such warehouse, and insure, if requested, movable property of bankrupt estates, without charge for storage if sold at auction by him. Such auctioneer shall give a bond to the United States, to be approved by this Court, with sureties or a surety company in the sum of \$50,000, conditioned for the faithful and prompt accounting for all moneys and property which may come into his possession as such auctioneer, for compliance with all rules, orders and decrees of this Court, and for the faithful performance of the duties of his office in all respects.

**RULE XVII.****Sales, How Held, and Advertisement Thereof.**

Sales of the property of bankrupt estates in New York City shall be by public auction by the official auctioneer, unless otherwise specially ordered. Notice of auction sales shall be given to all known creditors by mail and by advertisement in the New York Times and Daily Trade Record, if the sale is in the City of New York, and in the newspaper designated in Rule 5 if the sale is without the City of New York. Such notice shall be sent and published five days before the sale, in cases of sales by receivers, and ten days before the sale in cases of sales by trustees, unless a shorter notice is specially ordered. Sales in New York City shall also be advertised as above required on the morning of the sale. The receiver or trustee conducting the sale may cause such further advertising or notice to be given as he may deem desirable.

At least two days before a sale a conspicuous notice of such sale shall be placed on the front of the premises where the sale is to take place, and the property placed on exhibition there.

The receiver or trustee may direct that the goods be sold first in bulk and then in lots, the highest aggregate being accepted, or in any other manner, in his discretion. If the sale is not a simple auction sale, the method to be adopted and any other terms of sale shall be printed on the catalogue and announced by the auctioneer before the sale. The auctioneer shall also announce before each sale and the catalogue shall contain a statement that no sale will be completed without the special order of the Court, unless the sale realizes seventy-five per cent or more of the appraised value of the goods sold. Any goods replevined or reclaimed or for any cause withdrawn from the sale shall be set apart and conspicuously marked "Withdrawn from sale," and such fact announced by the auctioneer before the sale.

**RULE XVIII.**

**Auctioneer's Fees and Charges.**

The auctioneer shall be allowed a reasonable charge for the storage of goods if not sold by him, and his reasonable disbursements for necessary labor, cataloguing, printing, insurance, and all other actual and necessary disbursements. He shall also be allowed the following commissions upon the proceeds of sales made by him: Four per cent on the first five thousand dollars or any part thereof; two per cent on the next ten thousand dollars or any part thereof, and one per cent on any additional amount. No other compensation shall be allowed.

**RULE XIX.**

**Taxation of Fees and Charges.**

Any official of this Court (including the official auctioneer) making any charge for services or expenses, shall upon the request of any interested party deliver to him a statement in writing of such charge or fee, properly itemized, and the amount of such charge or fee may thereupon be taxed by the Clerk upon a notice of two hours if the auctioneer or official making the charge has an office within the City of New York, and upon a notice of twenty-four hours if he has an office outside of the City of New York.

**RULE XX.**

**Counsel for Receivers.**

No receiver in bankruptcy shall employ any attorney or counsel except upon the order of this Court. Such order shall be granted only upon the petition of the receiver setting forth the name of the counsel whom he wishes to employ, the reasons for the selection of that person, and showing the necessity of employing any attorney or counsel.

**RULE XXI.**

**Books and Documents, How Disposed of.**

Account books, documents and papers of every description, constituting part of a bankrupt's estate, which have been deposited for storage with the official auctioneer by any receiver, trustee, bankrupt or other person, shall be removed from such storage within one month after the case is closed, and within one year after such deposit in all cases, whether the case is closed or not. If this rule is not complied with, the auctioneer may sell the same at public auction, after mailing reasonable written notice of the time and place of such sale to the receiver or trustee, or to the bankrupt or his attorney, if the case has been closed. The auctioneer, upon approval of the Court, may appropriate so much of the proceeds of said sale as may be reasonably necessary to pay him a just recompense for the storage charges on such account books and papers. All other property belonging to a bankrupt's estate, left on storage with the official auctioneer more than one year, shall be liable after such year to reasonable storage charges, and, if such storage charges are not paid, upon demand, the auctioneer may sell such property, after sending written notice by mail to the receiver or trustee of the time and place of such sale, and after due advertisement as provided in the Rules of this Court for auction sales, and shall pay into Court the proceeds in excess of storage charges, to await the further order of the Court.

**RULE XXII.**

**Allowances, Notice of Application for.**

All applications before Referees for allowances to receivers, trustees, appraisers, accountants or attorneys shall be heard on notice sent by mail to the creditors of the various attorneys, accountants and appraisers by the Referee. (Amended June 22, 1915. In effect July 1, 1915.)

## UNITED STATES DISTRICT COURT—SOUTHERN DISTRICT OF NEW YORK.

It is ordered that the following additional rule in bankruptcy be and hereby is adopted as a rule of this court:

**RULE XXIII.****Compositions, Affidavit on Confirmation of.**

Upon any application for confirmation of a composition, the bankrupt or alleged bankrupt shall tender to the Court with the order for confirmation, an affidavit which shall state all amounts paid or promised to be paid prior to, upon or after, the confirmation of said composition in consideration of or in connection with such composition, to the receiver, trustee or assignee and each of his or their respective attorneys and counsel, to the attorney for the bankrupt, to any person rendering service in effecting or aiding the composition, or to any attorney for petitioning creditors, and to attorneys, counsel or other representatives of creditors or creditors' committees. Such affidavit shall also state what if any reclamations are pending, and the disposition to be made of them, in the event of composition being approved.

**INSTRUCTIONS TO REFEREES IN BANKRUPTCY****And Charges Authorized to be Made by Them for Disbursements and Expenses.**

1. Referees are required to call a first meeting of creditors forthwith upon receiving schedules, and to do so without waiting for indemnity to cover expenses, or request from any party in interest.

2. All hearings before Referees on references held pursuant to any order of Court other than orders of adjudication, shall be considered as hearings on references to Referees as Special Masters and charged for at \$5 a day unless a higher charge be ordered by the Court.

3. Referees are instructed not to cause the proceedings of the first meeting of creditors, either at the first session thereof or any adjourned session, to be taken stenographically unless requested by some party or parties in interest, and if such request is made then not unless the same be approved by the Referee and arrangements made satisfactory to the Referee for the payment of the stenographer who takes the notes of such proceedings, and no stenographer shall be employed for this purpose unless approved by the Referee.

4. Referees are directed to exercise an active supervision over trustees to prevent delay in the settlement of estates. The provisions of section 47 of the Bankruptcy Act, requiring that trustees make reports every two months, and of section 65, requiring dividends to be paid within thirty days after the adjudication, if there is sufficient money applicable thereto to pay a dividend of five per cent, and thereafter whenever there is sufficient money to pay a dividend of ten per cent, should be strictly enforced. If any trustee, after due notice from the Referee, neglects to make such reports, or to pay such dividends, or unreasonably delays, in any respect, the prompt settlement of the estate, the Referee in charge is directed to make a certificate of the facts, and upon it to issue an order, returnable before the judge on any motion day, requiring the trustee to show cause why he should not be removed.

5. Referees are directed to make a report to the Court, in the months of April and October in each year, of all unsettled cases which have been pending before them more than fifteen months. Such reports should contain the title and number of the case, the date when it was referred, and a concise statement showing what substantial proceedings have been had in the case, and why it has not been closed.

6. All evidence offered before referees shall be taken stenographically and the notes thereof preserved, but not transcribed unless ordered by the Referee for his own use or at the request of some party in interest. If the Referee desires such transcript for his



own use it shall be furnished at the cost of the petitioner or moving party and shall be paid for before the final submission of the case.

Referees shall make and file their decisions in all calendar cases within one month after their final submission, unless such time be extended by order of a Judge of this Court, and shall forthwith give written notice of such filing to all the parties in interest or their attorneys who have appeared before them.

7. Upon receiving from or on behalf of any petitioning creditor the list referred to in General Order No. 9, Referees shall on payment of estimated expenses forthwith call a first meeting of creditors, and prepare and file schedules in compliance with section 39, subdivision 6, of the Bankruptcy Act.

8. Referees sitting as Special Masters to ascertain the compensation of Receivers and their attorneys are directed not to allow any attorney for any Receiver more than twice the statutory allowance of the Receiver. If, in the opinion of the Master, a greater compensation should be awarded, Master shall certify concisely to the Court the grounds of his opinion and the amount of the Receiver's fee allowed. Applications for additional compensation shall be heard as motions on the Bankruptcy Motion Calendar. The same course shall be pursued by Referees in respect of the compensation of attorneys for Trustees. (Added February 1, 1913.)

9. The referees are required to arrange among themselves a schedule for the months of July, August and September, in such manner that at least two Referees shall be in attendance at their several offices at any one time during said months. Such schedule being furnished to the Court, the Clerk will thereupon assign all cases in accordance with the schedule. (Added February 1, 1913.)

10. Within twenty days after a petition for discharge shall have been filed with the Referee, the order to show cause thereon shall be issued. (Added June 22, 1915. In effect July 1, 1915.)

And it is further ordered that the following additional instructions to referees are hereby adopted and ordered to be communicated to the several referees, viz.:

11. Upon the declaration of a final dividend referees shall direct the trustees at the expiration of one year from the date of such final dividend, to stop payment on all dividend checks then unpaid, and to deposit the amount of such unclaimed dividends with the Clerk of this Court, and at the same time to file with said Clerk a list of the persons entitled to such unclaimed dividends. The Clerk shall thereupon deposit the amount so received by him in the registry of the Court to the credit of the case.

If, after the declaration of a final dividend or other termination of proceedings, any trustee or receiver shall have paid to him any moneys of the estate, he shall notify at least two of the larger creditors of the estate, and forthwith pay the same to the Clerk of this Court, who shall deposit the same as is hereinabove directed in respect of unclaimed dividends.

By order of the Court.

Dated April 10, 1916.

#### **Authorized Charges for Disbursements and Expenses.**

The following charges are allowed and shall be separately stated in monthly accounts:

1. Cash paid for advertisements (vouchers to be annexed).

2. For all clerical aid in preparing advertisements and notices to creditors of first meeting, mailing the same, and making proof thereof, keeping register, files and records, and preparing typewritten memoranda of proceedings prior to the first meeting of creditors, including stationery, envelopes, printing, letters, messages, and all petty expenses, \$5.00.

(This item may be entitled Clerical aid, etc., prior to first meeting.)

3. For similar clerical aid and other expenses as above stated, in proceedings upon applications for discharge, \$5.00.

4. If the notices to creditors in the above proceedings exceed 20 in number, 10 cents in addition to the above, for each notice in excess of 20 up to 50 additional notices, and 5 cents for each notice above 70 (the number of creditors to be stated).

5. For office accommodations and for clerical aid in taking and keeping notes and records of proceedings at first meeting of creditors and thereafter up to choice or appointment and qualification of trustee, \$2.50.

6. Other special notices to creditors as required by law, 5 cents per each notice (the number to be stated).

7. For clerical aid in filing, recording, preserving and returning any interlocutory order made by the Referee, 10 cents.

8. For three appraisers in cases of merely nominal assets, i. e., assets of apparent but no real value (beyond the charge for appraisal), \$1 each, \$3.00.

9. For office accommodations and for clerical aid in taking and keeping notes and records at all meetings at which any business is transacted (other than the first session of the first meeting of creditors), for each meeting, \$2.50.

10. For copies of orders or other papers the person requesting and receiving such copies shall pay 10 cents per folio.

In order to insure similarity of practice in all cases, it is directed that the above charges shall be adhered to and applied by all the Referees uniformly, and that no other charges be made without previous submission to this Court and approval by the Court or a Judge thereof. The Referee's certificate that the case is closed shall be accompanied by an itemized statement of the sums deposited as indemnity, the items of charges against the same and the balance remaining, if any.

11. Referees are authorized in their discretion to require the charge for adjourned meetings (viz., \$2.50) to be paid in advance by the party requesting such adjournment.

12. The foregoing provisions for clerical services and office expenses (i. e., sections 2, 5 and 9) shall apply only to cases in which there are no assets; where there are sufficient assets double said amounts shall be charged.

13. If there are sufficient assets in the estate, the estimated amount of items 1, 2, 4 and 5 shall be paid out of the estate directly to the Referee by the receiver or trustee in charge upon the Referee's written request.

The estimated amount of items 1, 3 and 4 shall in applications for discharge, be paid by the bankrupt on filing his petition for discharge.

Charges under items Nos. 6-10 inclusive shall be paid for out of the estate on settlement of the trustee's accounts. But if in the opinion of the Referee sufficient funds will not be in the estate at the time of such settlement, payment may be required of said items from the persons requesting the service.

#### Instructions to Receivers in Bankruptcy.

1. Receivers are required to carefully observe Bankruptcy Rule 20, and show the necessity of counsel in applying for the same.

2. It is ordinarily the duty of receivers to press for adjudication, and if petitioning creditors delay entry thereof they must report that fact to the Court.

3. If in involuntary cases schedules are not filed within the time allowed by law (or any extension thereof by order), receivers must cause to be made on behalf of petitioning creditors the schedule contemplated by General Order No. IX, deliver the same to a Referee designated by the Court, and request said Referee to comply with the seventh instruction to Referees.

4. In all cases it is the duty of receivers to hasten the calling of the first meeting of creditors, and any delay in calling the same must be reported to the Court.



5. The fees of Special Commissioners under section 21-a are fixed as follows, viz.: For each hearing or adjournment, \$2, and for each folio of testimony taken, five cents additional. Receivers are authorized to pay Commissioners' fees on this basis, and if the estate shall have passed into the hands of a trustee before such fees are fixed, then trustees are authorized to pay same. (Added October 4, 1912, applying to all examinations commenced on or after October 7, 1912.)

6. Receivers are required to file their reports and accounts within twenty days after the election of the Trustee, unless the time be extended by the Court upon application of the Receiver showing sufficient reason for such extension, and Referees are required to enforce this rule. (Added February 1, 1913.)

# LIST OF DEPOSITORIES IN BANKRUPTCY.

## New York County.

Bankers Trust Company, January 29, 1904.  
 Citizens' Central National Bank, March 14, 1904.  
 New York Trust Company, November 11, 1907.  
 American Exchange National Bank, November 12, 1907.  
 Seaboard National Bank, November 13, 1907.  
 Central Trust Company, November 12, 1908.  
 United States Trust Company, November 12, 1908.  
 Merchants' National Bank, March 26, 1909.  
 National Park Bank of New York, March 8, 1910.  
 Guaranty Trust Co. of New York, March 9, 1910.  
 United States Mortgage & Trust Co., April 25, 1910.  
 Lawyers' Title Insurance & Trust Co., June 13, 1910.  
 Equitable Trust Company of New York, March 6, 1912.  
 Empire Trust Company, April 16, 1914.  
 Broadway Trust Company, April 16, 1914.  
 Columbia Trust Company, April 18, 1914.  
 Metropolitan Bank, April 20, 1914.  
 Chatham & Phenix Natl. Bank, April 20, 1914.  
 Metropolitan Trust Company, April 24, 1914.  
 Irving Natl. Bank, April 28, 1914.  
 The Union Trust Company, May 1, 1914.  
 The Farmers' Loan and Trust Company, May 28, 1914.  
 Title Guarantee & Trust Co., May 29, 1914.  
 The Corn Exchange Bank, October 29, 1914.  
 Mechanics & Metals National Bank of the City of New York, March 24, 1915.  
 Astor Trust Company, June 22, 1915.

## Westchester County.

The Mutual Trust Company of Westchester County, Port Chester, March 26, 1908.  
 The Westchester Trust Company, Yonkers, December 13, 1908.

## Putnam County.

The Putnam County National Bank, Carmel, December 13, 1898.

## Dutchess County.

Poughkeepsie Trust Co., June 18, 1914.

## Columbia County.

The National Hudson River Bank of Hudson, December 13, 1898.

**Greene County.**

The Catskill National Bank, Catskill, October 6, 1905.

**Ulster County.**

The First National Bank of Rondout, December 13, 1898.

**Orange County.**

The Quassaick National Bank, Newburgh, December 13, 1898.

**Rockland County.**

The Nyack National Bank.

**LIST OF AUTHORIZED SURETY COMPANIES.**

Pacific Coast Casualty Company, San Francisco.  
 Illinois Surety Company, Chicago.  
 American Bonding Company of Baltimore.  
 Fidelity & Deposit Company of Maryland, Baltimore.  
 Maryland Casualty Company, Baltimore.  
 United States Fidelity and Guaranty Company, Baltimore.  
 Massachusetts Bonding and Insurance Company, Boston.  
 International Fidelity Insurance Company, Jersey City, N. J.  
 American Surety Company of New York.  
 The Fidelity and Casualty Company of New York.  
 National Surety Company, New York.  
 United States Guarantee Company, New York.  
 The Title Guaranty and Surety Company, Scranton, Pa.  
 American Fidelity Company, Montpelier, Vermont.  
 Southwestern Surety Insurance Company, Denison, Texas.  
 Equitable Surety Company, St. Louis.  
 New England Equitable Insurance Company, Boston.  
 Southern Surety Company, St. Louis, Mo.  
 The Ætna Accident and Liability Company, Hartford, Conn.  
 Globe Indemnity Company, New York.  
 Casualty Company of America, New York.  
 Royal Indemnity Company, New York.  
 Chicago Bonding and Surety Co., Chicago.  
 Hartford Accident and Indemnity Company, Hartford, Conn.  
 New Amsterdam Casualty Company, New York.  
 Pennsylvania Surety Company, Harrisburg.  
 American Indemnity Company, Galveston.  
 London & Lancashire Indemnity Company of America, New York.

**The Bankruptcy Rules are amended by the addition of the following rules:**

24. Receivers, When to Continue Business—The order appointing a receiver may authorize him to continue the business for a period of not more than five days, in which case he shall within such period inquire into the propriety of its further continuance and submit to the court a report on such inquiry with his recommendation thereon. Upon such report the court may authorize a further continuance of the business for a fixed period. The continuance of the business for the provisional period of five days shall not entitle the receiver to more than a single commission, except upon special direction of the court. Dated October 24, 1916.

The "Instructions to Referees in Bankruptcy" are hereby amended by the addition of the following article:

12. In reporting upon receivers' and trustees' accounts, where the petitioner has conducted business, the referee shall state the length of time during which the business has been conducted, a general description of the business, its gross volume during the period of its conduct, and the net result in profit or loss to the estate. Dated October 24, 1916.

The second "Instructions to Referees in Bankruptcy" shall be amended so as to read as follows:

2. All hearings before referees on references after adjudication, except hearings on discharges and compositions, shall be treated as part of the general administration of the estate, and not as references to special masters.

Referees will annex to all reports as special masters a certificate showing the dates on which hearings were held, or consideration given to the cause, and the total number of days so occupied. The court will calculate allowances to special masters upon such certificates at the rate of \$5 for each day, unless application is made for a higher amount.

By order of the court. Dated October 25, 1916.

# NORTHERN DISTRICT OF NEW YORK.

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## RULE I.

### Sessions of District Court.

Except during the absence or inability of the District Judge, the District Court will be open for the transaction of business as a Court of Bankruptcy on the first and third Tuesdays of every month at the chambers of the Judge in Norwich, N. Y., at ten o'clock in the forenoon, except during the months of July and August and when the Judge is holding a term elsewhere. No contested case or matter in bankruptcy will, in ordinary circumstances, be taken up on other days. In case of the non-attendance of the Judge at the time hereby appointed, or at any other time which may by special order be designated for any Special Session of the Court, all proceedings shall be continued, as of course and without prejudice, to the next session of the Court.

The District Court will also be open for the transaction of business as a Court of Bankruptcy on the first days of the regular terms appointed to be held at Albany on the second Tuesday in February, at Syracuse on the first Tuesday in April, at Binghamton on the second Tuesday in June, at Auburn on the first Tuesday in October, and at Utica on the first Tuesday in December.

## RULE II.

### Notice of Motions and Other Hearings.

Motions must be noticed and orders to show cause must be made returnable on Tuesdays and at the times and places indicated in the preceding rule. If noticed for any other day, except by leave of the Judge, the notice will be treated as a nullity. Notice of motion, if personally served, must be served at least eight days, and, if served by mail, at least ten days, before the time appointed for the hearing. The Judge or Referee may, upon an affidavit showing grounds therefor, make an order to show cause why the relief demanded should not be granted and in the order may direct that service of less than eight days shall be sufficient. When not otherwise specially provided for by law, all notices of other hearings and proceedings in bankruptcy shall conform to the foregoing provisions as to notices of motion.

## RULE III.

### Proceedings in Counties Where There is no Referee or Newspaper.

In case a petition is filed by or against a bankrupt who resides in any county where there is a vacancy in the office of referee or where the referee is disqualified, absent, sick or otherwise unable to act, the reference shall be made to the referee who is most conveniently located to the bankrupt's residence. In case a petition is filed by or against a bankrupt who resides in a county where there is no designated newspaper, or where the designated newspaper for any reason refuses to act, the notices required by law may be published in a newspaper named by the parties in interest published in the county where the bankrupt resides, or the major part of his property is situated.

## RULE IV.

### Filing Petition; Deposit of Fees.

All petitions shall be filed with the Clerk at his office in Utica. At the time of filing a petition thirty dollars shall be paid to the Clerk by the petitioner, except in

cases where a fee is not required from a voluntary bankrupt; being ten dollars for the Clerk, fifteen dollars for the Referee and five dollars for the Trustee. In case the petition is dismissed it shall be the duty of the Clerk forthwith to return to the petitioner the amount deposited for the fees of the Referee and Trustee, respectively. Voluntary petitions must be filed in triplicate and involuntary petitions in duplicate. When the Judge is absent from the District it shall be the duty of the Clerk to enter an order as provided in form No. 15, reciting the absence of the Judge, and referring the case to the proper Referee. When the Judge is present a Court order shall be entered as provided in form No. 14. Fees deposited by the petitioner in an involuntary case must be returned to him by the trustee out of the estate of the bankrupt in all cases where property sufficient for such purpose comes to the hands of the trustee.

#### RULE V.

##### Petition in Forma Pauperis.

In case a petition is filed by a proposed voluntary bankrupt which is accompanied by an affidavit under subdivision 2 of section 51 of the act, it shall be the duty of the Clerk to file said petition without the payment of the fees provided for by law. If the Clerk, or the Referee to whom said petition is referred, has reason to believe such affidavit is false, he may file a certificate to that effect and cause the bankrupt to be examined. If upon such examination the Referee reports in writing that the statements contained in such affidavit are false, and that the bankrupt has or can obtain money with which to pay said fees, such report shall be sufficient proof upon which to base proceedings under subdivision 4 of General Order No. XXXV.

#### RULE VI.

##### Referees to Fix Time and Place of Hearings.

The Clerk shall mail a copy of the order of reference to the Referee, and thereafter all proceedings, except such as are required by the act, or by the general orders, to be had before the Judge, shall be had before the Referee, who shall fix the time when and the place where he will act upon the matters arising in the case; except that all meetings of creditors must be held in the county of the bankrupt either at the county seat or at a place more convenient for the parties in interest. If the Referee cannot attend on the day named in the order of reference he may name a subsequent day within ten days thereafter, and give the bankrupt timely notice of the change; but the day first named shall be the day from which the bankrupt shall be subject to the orders of the Court as provided in General Order No. XII.

If the place named in the order of reference be manifestly inconvenient as a place of meeting for the parties in interest, the Referee may fix a more convenient place and give the bankrupt timely notice of the change.

#### RULE VII.

##### Involuntary Petition — Notice to Debtor — Reference on Default.

Where an involuntary petition is filed in conformity with law it shall be the duty of the Clerk to enter an order to show cause and issue a subpoena, as provided in forms No. 4 and No. 5, respectively, stating the time and place when the debtor is to appear. There shall be indorsed upon the subpoena the following:

"Notice to defendant. It is not necessary for you to appear on the return day of this subpoena. You may appear and plead to the petition at any time within five days after said return day."

In case no pleadings are filed by the bankrupt or any of his creditors the Judge, or, in his absence, the Clerk, will enter the proper order without further appearance or motion on the part of the petitioner.



**RULE VIII.**

**Pleadings in Involuntary Cases — Trial by Jury.**

Prior to the denial of bankruptcy as provided in form No. 6, the pleadings in involuntary cases on the part of the alleged bankrupt, or any of his creditors who oppose the adjudication, shall conform as nearly as may be to the pleadings of the defendant in an equity action in the Circuit Court of the United States.

In case a jury trial is demanded, as provided by section 19 of the act, the Clerk shall enter an order as provided in form No. 7, and the issue may be noticed for trial at any of the regular terms of the District Court and shall proceed in all respects like the trial of any action at common law, except that the Court may frame and send to the jury special questions presenting the issues to be tried. Upon the coming in of the verdict the Judge may, in accordance therewith, make an adjudication either that the debtor is or is not a bankrupt. In case a jury trial is not demanded the Judge may determine the issues presented by the pleadings or he may refer the same, or any specified issue, to a special master to ascertain and report the facts, and the master shall report the evidence with findings of fact and conclusions of law separately stated.

Except in jury trials causes cannot be noticed for proof and witnesses cannot be called and sworn in open Court without the previous special allowances of the Judge, on adequate cause shown.

**RULE IX.**

**Dismissal of Petition.**

In all cases of application for the dismissal of a petition, the bankrupt shall file a list under oath of all his creditors, with their addresses, and thereupon ten days' notice by mail and by publication once at least ten days prior to the hearing of the application, shall be given to all creditors of the pendency of such application and of the time and place of the hearing thereon.

**RULE X.**

**Discharge and Composition — Petition and Report of Referee.**

The petition for a discharge or for a confirmation of a composition must be duly verified and be filed with the clerk. The petition for a discharge must conform to the provisions of General Order No. XXXI, and of form No. 57. There must also be presented at some time before the final discharge is granted a report or certificate of the Referee that the bankrupt has in all things conformed to the requirements of the act, that he has committed none of the offenses and done none of the acts prohibited in subdivision b of section 14 of the act, and that he is, in the opinion of the Referee, entitled to his discharge.

Proof of mailing and publication, as provided in the next succeeding rule, shall be sent by the Referee to the Clerk at Utica, N. Y., at least two days prior to the hearing, and the Clerk shall present the same to the Court at the hearing.

**RULE XI.**

**Discharge Order to Show Cause — Opposition of Creditors.**

The order to show cause why a discharge should not be granted or a composition confirmed may be entered by the Clerk or the Deputy Clerk. It must state the time and place of the hearing and direct that the Referee give notice as provided in section 58 of the act to all known creditors and other persons in interest. The notice must be mailed and published once, at least ten days prior to said hearing, except that in cases commenced after June 25, 1910, there shall be thirty days' notice by mail, and publication of all applications for the discharge of bankrupts. Proof of mailing and publication must be presented on the return day of the order. If no creditor or other party in interest appears and opposes, the discharge shall be granted. In case a creditor or other party in interest desires to oppose the granting of the discharge he shall appear on the



return day and file a verified specification of the grounds of his opposition, as provided in General Order No. XXXII. The issue thus joined may be referred to the referee to ascertain and report the facts with his conclusions thereon. Either party may except to said report and the exceptions may be heard by the Judge on any Court day upon the usual notice. The petitioner may, within five days from the service of a copy of the order of reference, and on giving at least eight days' notice personally or by mail to the objecting creditor, move the Court or Judge at term or in Chambers, to have the specifications of objections to the discharge or the confirmation of the composition made more certain and definite or within such time may demur thereto or move their dismissal; in default whereof such specifications shall be deemed sufficient to present the questions suggested thereby. Such notice of motion or demurrer shall also specify the grounds of objection.

#### RULE XII.

##### Pleadings Written on Legal Cap and Indorsed.

All petitions, schedules and pleadings shall be written, typewritten, or printed upon white paper of the size of legal cap—approximately thirteen inches long by eight inches wide. All pleadings must be properly indorsed with the name of the Court, the title of the cause, and, if the parties appear by an attorney, his name and office address. If the attorney resides in a city, the street and number must be given.

#### RULE XIII.

##### Notices and How Served.

All notices required to be given under section 58 of the act shall, in case the Referee so directs, be given by the bankrupt or his attorney in involuntary cases and by the petitioner or his attorney in involuntary cases, and when so given the person giving the notice shall make return to the Referee in the form of an affidavit with the notice, or a copy thereof, annexed, showing due mailing or publication of said notice as required by law. The affidavits of mailing and of publication may be sworn to or affirmed before any officer authorized to administer oaths under section 20 of the act. Notice to creditors of meetings subsequent to the first, in cases where there are undivided assets, shall be the same as the notice provided for the first meeting in section 58 of the act. In cases where there are no assets, the Referee may, in his discretion, dispense with the publication of such notice. The original notice shall be signed by the Referee. It shall be printed upon or inclosed within a sealed post-paid wrapper in such a manner that the address and postmark shall, if possible, be on the same paper as the notice, or, in the discretion of the Referee, said notice may be printed upon a postal card or other card. It is not intended by this rule to prohibit the use of "official envelopes."

#### RULE XIV.

##### Sales of Bankrupt's Property.

Public sales of real estate of bankrupts by Trustees in Bankruptcy shall be upon such notice as to time as the Referee directing the sale shall direct but such notice must be in all cases published and served on all creditors and persons in occupation of the premises either personally or by mail at least ten days prior to such sale. (Amended, 1913.)

#### RULE XV.

##### List of Claims and Accounts Transmitted to Clerk.

General Order No. XXIV shall not be construed to require the Referee to transmit to the Clerk a separate statement of each proof of debt, but only that he shall transmit a list of the claims proved after he has reason to believe that all the claims have been proved against the estate that will be presented.

General Order No. XXVI shall not be construed to require the Referee to transmit to the Clerk a separate account of each case which may be referred to him, but only a

statement of his disbursements in all cases and for all causes since his last monthly return.

# RULE XVI.

## Clerk to Transmit Papers to the Referee.

The Clerk shall transmit all proofs of claims, and other papers filed with him under General Order No. XX, subsequent to the reference, to the referee, except such papers which, by the terms of said General Order, are required to be filed with the Clerk alone.

# RULE XVII.

## Filing of Returns, Reports, Adjudications, Bonds, etc.

All returns and reports from referees or other officers of the Court shall be directed to the Clerk of the Court at Utica, N. Y., and all returns and reports which by law or the general orders are required to be made to the Judge, shall be directed to him in care of the Clerk at Utica, N. Y.

It shall be the duty of the Referee to transmit to the Clerk forthwith all adjudications made during the absence of the Judge, and all bonds of trustees and the orders approving the same within five days of the approval thereof. The Referee shall retain in his possession the papers and records until said case is finally closed. He shall then, within five days, transmit his record book and all papers in the case to the Clerk, together with a certificate specifying that the case is closed.

# RULE XVIII.

## Fees of Clerk, Referee and Trustee, When Paid.

The trustee's fee of five dollars deposited with the Clerk shall be paid to the trustee upon the certificate of the Referee that the services of the Trustee have been actually rendered and that the case has been closed. He shall be paid such commissions as may be allowed by the Referee under section 48 of the act as amended upon the order of the Referee at the time the dividend is made. The Referee shall be paid his commissions at the same time. In case no trustee is appointed, as provided in General Order No. XV, the Clerk shall, upon the certificate of the Referee, return the five dollar deposit to the petitioner.

The Clerk shall pay to the Referee the fifteen dollars deposited as fees of the Referee upon receiving the latter's certificate that the case has been closed and that his services have been rendered. Where there are no assets the case shall be deemed closed for the purpose of the payment of said fees to the Referee and trustee when a discharge has been granted or refused to the bankrupt. If no application for a discharge has been made the case shall be deemed closed at the expiration of two months from the date of the adjudication. In cases where there are assets the case shall be deemed closed upon the confirmation of a composition or the payment of the final dividend.

# RULE XIX.

## Money Drawn by Countersigned Checks.

When money is deposited in the name of the Clerk of the Court, or of a Trustee, it shall not be drawn unless by check signed by said Clerk or Trustee, having on its face the number and title of the cause and countersigned by the Referee in charge. All checks must conform to this rule and also to the requirements of General Order No. XXIX. The Clerk shall furnish to the depositories a copy of said general order and also a copy of this rule.

# RULE XX.

## Referees to Direct Prosecution and Defense of Suits and Allow Amendments.

The Referee may direct the prosecution and the defense of suits by the trustee as provided in subdivisions c and d of section 11 of the act. He may allow amendments

to the pleadings and papers which do not involve jurisdictional defects in all matters pending before him, and he shall, in the first instance, have full power and authority over the proof and allowance of claims as provided by section 57 of the act and General Order No. XXI. When a petition referred to a Referee is insufficient upon its face to confer jurisdiction he shall return the same to the Clerk with a statement of the defects noted thereon, and no further proceedings shall be had thereon until a new or amended petition remedying such defects is filed with the Clerk.

The Referee may, upon his own motion, direct that the schedules be made more definite and certain by requiring the street and number to be given where a creditor resides in a city, and the Referee may direct that the bankrupt furnish any other information regarding his property or his creditors which the Referee may deem essential.

#### **RULE XXI.**

##### **Referees to Grant Stays.**

When a motion for an injunction is pending or is about to be made the Referee may, in order to prevent injury to the property of the bankrupt, or otherwise, grant a temporary restraining order staying proceedings until the hearing and decision of said motion. In case all parties in interest agree that said motion be heard by the Referee in charge, they may file with the Referee a written stipulation to that effect. The decision of the Referee on such motion shall be filed with the Clerk, and if the Referee decides that an injunction shall issue, an order to that effect may be made by the Judge.

#### **RULE XXII.**

##### **Referees May Pass upon Relevancy of Testimony and Confine Examinations Within Reasonable Limits.**

Referees may pass upon the competency, materiality and relevancy of evidence in matters properly before them for investigation, and shall have all the powers of the Judge concerning the admission or rejection thereof, and shall note on the record all objections, the rulings thereon and the exceptions which may be taken; and in cases where testimony is excluded they shall note a brief statement by the party offering the same of the facts he expects to prove thereby. Referees shall limit the inquiry before them to relevant and material matters, and in case an examination or a cross-examination is unnecessarily prolix, or improperly prolonged, the Referee may, in his discretion, limit the time of such examination; or he may impose costs, including the fees of the stenographer and other expenses, upon the party responsible for the improper prolongation.

#### **RULE XXIII.**

##### **Hearing of Question Certified by Referee.**

After a question has been certified by the Referee pursuant to General Order No. XXVII, and as provided in form No. 56, the papers shall be filed with the Clerk and the hearing may be brought on before the Judge upon any Court day by either party by giving the usual notice provided in Rule II of this Court.

#### **RULE XXIV.**

##### **Claims Need Not be Approved Where There are No Assets.**

In cases which show no assets the Referee need not formally approve or disallow any claims filed with him, except on special request or motion, but such claims shall be returned with the papers to the Clerk at the conclusion of the case. If, in such a case, assets sufficient to pay a dividend are discovered by the Trustee, such claims shall be allowed, continued or disallowed by the Referee at the first meeting of creditors after it is determined that such estate will pay a dividend.



**RULE XXV.**

**Referees May Make Rules in Proceedings Before Them.**

Referees may make other general or special rules for the guidance of proceedings before them within their respective territorial jurisdictions, and may from time to time alter and amend the same, provided that such rules shall not be inconsistent with the provisions of the act, with the general orders of the Supreme Court or with these rules.

**RULE XXVI.**

**Powers Delegated to Referees.**

The referees heretofore or hereafter appointed for the northern district of New York are hereby, respectively, vested with the jurisdiction which, by the Bankruptcy Act of July 1, 1898, and the general order of the Supreme Court, promulgated at the October Term of 1898, the Court or Judge may delegate to or confer upon said referees; and they are, respectively, empowered and authorized to do all acts, take all proceedings, make all orders and decrees, and perform all duties so authorized to be delegated by said act, and said general orders, without special authority in each case and under the general authority conferred by this order.

**RULE XXVII.**

**Special Order of Judge.**

In cases not provided for by the Bankruptcy Act of 1898, the general orders, or these rules, the practice of the District Court shall be subject to the special order of the District Judge, which order shall be followed even though it may conflict with these rules.

**RULE XXVIII.**

**Rules Under Act of 1867, When Applicable.**

The rules adopted by this Court under the act of 1867, where they are not inconsistent with these rules, the provisions of the act of 1898, and the general orders of the Supreme Court, shall be followed as far as applicable.

**RULE XXIX.**

**Revocation of Former Rules.**

The order, dated July 29, 1898, conforming the practice under the Bankruptcy Act of 1898 to the practice under the Bankruptcy Act of 1867, the order of the same date regulating the practice in counties where a Referee had not been appointed or a newspaper designated, and the order of October 10, 1898, fixing the times for holding special sessions of the Court are, and each of them is, hereby vacated.

**RULE XXX.**

**Fees of Referee as Special Master.**

The issues under Rules VIII and XI shall be referred to the Referee as a special master, and he shall be entitled to receive for his services five dollars for each day actually spent in hearing such reference and preparing his report. Such sum shall be chargeable in the first instance to the party opposing the adjudication, discharge or composition, respectively, and indemnity may be demanded by the Referee before proceeding with the hearing. In case the petition in an involuntary proceeding be dismissed with costs such sum may be taxed against the petitioning creditors.

If a composition is not confirmed or is set aside such sum may, in the discretion of the Court, be ordered paid by the trustee.

In other cases when matters are referred to the Referee as a special master, requiring services not devolving upon him, by virtue of his office, he shall receive a like compensation which shall be chargeable in the first instance to the party bringing on the

reference and shall be paid by the party ultimately defeated in such reference. Should such reference, in the cases last referred to, be unusually difficult or extraordinary, a higher rate of compensation may be paid if stipulated by both parties and sanctioned by the Judge.

#### **RULE XXXI.**

##### **Referees Not to Appoint Receivers, etc.**

Referees in bankruptcy in this district will not appoint receivers or exercise jurisdiction over or make orders for the direction of receivers appointed by the Court, nor will they in any case make an order relating to the disposition of the property in the hands of such receivers, or in relation to the accounts of such receivers unless by special order of the Judge. All such matters must be brought to the attention of the Court appointing the receiver.

#### **RULE XXXII.**

##### **Confirmation of Composition.**

In all cases of composition, the application for confirmation with notice and proofs of service must be accompanied by a report from the Referee, the offer and acceptances, and the certificate of the depository, setting forth the date when the petition was filed, the amount and place of deposit, the names of all the creditors whose claims are allowed and the amount of same, and the amount to which each is entitled under the composition; also all expenses and allowances and to whom made and payable.

The order of distribution will provide that the same be made by the Referee and specify the names of creditors, etc., and the amount to be paid to each.

#### **RULE XXXIII.**

##### **Inventories.**

Inventories by receivers and trustees of bankrupt estates shall be made and executed in duplicate; one to be filed with the Clerk of this Court within ten days after completion, the other to be filed with the Referee. Failure to comply with this rule shall be ground for removal.

#### **RULE XXXIV.**

##### **Attorney for Trustee.**

Referees shall in no case nominate or appoint an attorney or attorneys for a trustee unless specially directed so to do by the Judge.

#### **RULE XXXV.**

It is ordered that, after the expiration of one year from the time a case is referred to a Referee, such Referee cause the Trustee in bankruptcy to make and file a report of all his receipts, disbursements and transactions in relation to the estate, and that the Referee call a final meeting of creditors for the purpose of closing the estate, unless there be litigation pending which makes the closing of the estate impracticable or impossible.

Also ordered that when a case is closed by the Referee the papers in the case be forwarded to and filed with the Clerk.

Also ordered that all correspondence relating to cases in bankruptcy be filed by the Referee separate and apart from his private correspondence and with the papers in the case unless such correspondence be of a private and confidential nature.

Also ordered that in case a Trustee in bankruptcy neglects or refuses when ordered so to do to file his report such neglect or refusal will be cause for removal.

Also ordered that referees in bankruptcy, so far as possible and practicable, itemize the various fees for expenses charged and received by them in administering an estate, and that in computing commissions the records show the amount on which commissions are computed and allowed. Feb. 7, 1916.



# EASTERN DISTRICT OF NEW YORK.

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## RULE I.

### Rules Governing Referees.

Examine schedules and require them to conform to the provisions of the Rules of the United States Supreme Court and the Rules of this Court.

## RULE II.

Notify bankrupt and his attorney to be present before Referee on the day fixed by the Court in the order of reference.

## RULE III.

The day and hour of filing shall be indorsed on each paper filed with Referee.

## RULE IV.

Fix day for first meeting of creditors.

## RULE V.

Publish first meeting of creditors in newspaper designated by the Court in the county for which the Referee is appointed. Such publication to be made once only, unless otherwise ordered by the Court.

## RULE VI.

After first meeting of creditors file with Clerk of the Bankruptcy Court a list of the claims proved, under the heading of Unsecured, Secured, and Preferred, with address of each creditor.

## RULE VII.

File with Clerk of Bankruptcy Court the appointment of the Trustee, signed by all persons voting, with proof of publication and certificate of mailing notices.

## RULE VIII.

Notify Trustee of his appointment and the amount of the bond as fixed by creditors or Referee.

## RULE IX.

Referee shall inclose to Trustee a form for his acceptance of the trust.

## RULE X.

Referee shall file with the clerk of the Bankruptcy Court notification to Trustee and his acceptance, and approve bond of Trustee.

## RULE XI.

If no creditors appear at first meeting and no claims are proved, and schedule discloses no assets, Referee shall enter order that no trustee be appointed until further order of the Court.

**RULE XII.**

If no creditors appear at first meeting, but proofs of claims are filed, Referee shall appoint a trustee; but amount of bond fixed by him may be nominal, if schedules disclose no assets.

**RULE XIII.**

If creditors fail to appoint a trustee at first meeting, Referee shall appoint trustee and fix the bond in proportion to the amount of assets disclosed in schedules.

**RULE XIV.**

Referees shall appoint appraisers whenever the schedules or the examination of the bankrupt discloses real or personal property of a kind requiring appraisal. Appraisers should be persons thoroughly competent to appraise the property of the bankrupt.

**RULE XV.**

On the coming in of the final report of Trustee, Referees shall declare the amount of dividends on claims proved and allowed, and deliver to the Trustee dividend sheets showing the amount to be paid on each claim allowed, and on the distribution of all assets in hands of Trustee, enter order discharging him of his trust.

**RULE XVI.**

If the schedules of bankrupt or his examination disclose no assets, or the report of the Trustee shows no assets, Referee may enter order discharging Trustee of his trust.

**RULE XVII.****Rules Governing Trustees.**

The attention of Trustees is specially called to Rule XVII of United States Supreme Court, which must be strictly observed.

**RULE XVIII.****General Rules.**

Motion days in Bankruptcy will be on Friday of each week at 2 p. m.

**RULE XIX.**

The residence and post-office address of the bankrupt must be given in his petition

**RULE XX.**

Where an involuntary petition is filed and conforms to the requirements of law, it shall be the duty of the Clerk to enter an order to show cause, and issue a subpoena, returnable on a motion day, stating the time and place when the debtor is to appear, and attach to the subpoena the following notice:

"NOTICE TO ALLEGED BANKRUPT. You (and each of you is) are required to plead to the petition in the above matter within ten days after the return day, or within such further time as the Court may allow, failing to do so the petition will be taken *pro confesso*."

In case it is impossible to make said subpoena returnable on a motion day within the fifteen days provided by section 18 of the Act, the Clerk shall attach to the subpoena the following notice:

"The return of the subpoena is made on the ..... day of ....., A. D. ...., at 10:30 a. m., for the following cause: that the return be made on a motion day of this Court."

**RULE XXI.**

All proofs of claims shall be indorsed with title of proceeding, amount of claim, name of creditor and post-office address, and, if represented by agent or attorney, the name of the agent or attorney and his post-office address, and the Referee shall indorse thereon "Allowed," or "Disallowed."

**RULE XXII.**

All orders for examination of bankrupt shall be signed by Referee to whom proceedings are referred.

**RULE XXIII.**

All summons for attendance of witnesses shall be signed by the Clerk of Bankruptcy Court.

**RULE XXIV.**

All applications for Receivers or Special Warrants to Marshal must be made to the Judge of the Court.

**RULE XXV.**

All sales of real or personal property of the bankrupt, or redemption of property from lien, or compounding of claims, must be subject to the approval of the Judge of the Court before title thereto is passed.

**RULE XXVI.**

A certificate of discharge to bankrupt, on his petition for discharge, will not be granted until Referee reports that the bankrupt has conformed to all the requirements of the Act relating to Bankruptcy.

**RULE XXVII.**

Amendments to Schedules will be allowed by referees on application of the petitioner stating the cause of the error in the original on file, and must be made in triplicate and presented to the Referee, who will examine the same, and, if in accordance with the forms and rules of the United States Supreme Court, file the application and his order allowing the same, together with one of the amended schedules with the Clerk of the Court, and also forward to the trustees a copy of the order allowing amendment with one of the amended schedules, the other amended schedule to be retained by him.

**RULE XXVIII.**

If after the first meeting of creditors and appointment of a Trustee or Trustees, the schedules filed by the bankrupt should be amended by adding thereto the names of any creditors omitted from the original schedules as filed, such creditors shall be notified that such first meeting of creditors has been held and Trustee or Trustees appointed, and upon duly filing their claims with the Referee and having the same allowed by him, they will be entitled to notice of all further proceedings of which creditors are entitled to notice, and to participation in any dividends to be declared; and if it should be made to appear to the Court by any of the creditors, whose names have been added to the schedules by the amendment thereto that the appointment of the Trustee has been made in violation of the right of the creditors omitted from the original schedules, the said appointment shall be set aside and another meeting of creditors called for the appointment of another Trustee.

**RULE XXIX.**

After thirty days have elapsed from the date of the order of reference to a Referee of an adjudicated petition in voluntary bankruptcy, and no proceedings have been taken therein by the bankrupt, due notice having been given by the Referee to the bankrupt and his Attorney (if petitioner is represented by Attorney) to proceed in the matter,

and the time not having been enlarged, the Referee shall report the facts to the Court and apply for an order to show cause, to be served on the bankrupt or his Attorney, why the order of adjudication should not be vacated and the petition dismissed.

#### RULE XXX.

The amount deposited with a Referee to indemnify him for disbursements shall not exceed for first meeting of creditors, \$10, where the number of creditors does not exceed fifty, and for every creditor beyond fifty, ten cents for each additional creditor; for meeting of creditors to consider composition, \$15; and for every day occupied after the first day such as the Referee may deem necessary to cover the disbursement, not exceeding \$10; and on application by creditor or creditors for examination of bankrupt or witness, \$5; and for every day occupied after the first day, \$5 in addition thereto, unless a greater amount is specially ordered by the Court.

#### RULE XXXI.

The amount deposited with the Clerk of the Court to indemnify him for disbursements shall not exceed \$5 on application for discharge, and \$5 on application to confirm composition, unless specially ordered by the Court.

#### RULE XXXII.

The Trustee's fee of five dollars deposited with the Clerk shall be paid to the Trustee upon the coming in of the Referee's report, that the Trustee has been discharged from his trust. In case no Trustee is appointed, as provided in General Order No. 15, the Clerk shall, upon the report of the Referee, return the five dollars deposited for fees of Trustee, to petitioner.

On the coming in of the Referee's final report, the Clerk shall pay to the Referee the ten dollars deposited as his fees. When there are no assets, the case shall be deemed closed for the purpose of the payment of said fees to the Referee and Trustee, when a discharge has been granted to the Trustee. In cases where there are assets, the case shall be deemed closed upon the confirmation of a composition, or the payment of a final dividend.

#### RULE XXXIII.

The following are the newspapers designated in which notices required by the Act of Congress relating to Bankruptcy are to be published:

- The Brooklyn Standard-Union for the County of Kings.
- The Daily Star, Long Island City, for the County of Queens.
- The South Side Signal for the County of Suffolk.
- The Staten Islander for the County of Richmond.
- The South Side Observer for the County of Nassau.
- The Brooklyn Daily Eagle for the County of Kings.

#### RULE XXXIV.

The following are the Banking Institutions designated as depositories for the money received by Trustees of bankrupt estates:

- Corn Exchange Bank, Brooklyn Branch.
- The Franklin Trust Co., of the County of Kings.
- The Hamilton Trust Co., of the County of Kings.
- The Corn Exchange Bank, Staten Island Branch, of the County of Richmond.
- The Corn Exchange Bank, Queens County Branch, of the County of Queens.
- Queens County Trust Co., of the County of Queens.
- The People's Trust Co., of Brooklyn.



The Nassau Trust Co., of Brooklyn.  
 The Home Trust Co., of Brooklyn.  
 City National Bank of Brooklyn.  
 Nassau National Bank of Brooklyn.  
 The Broadway Trust Co., Flatbush Branch, County of Kings.  
 Brooklyn Trust Co., County of Kings.  
 Kings County Trust Co., Brooklyn.  
 Mechanic's Bank, Brooklyn.  
 Suffolk County Trust Co., of Riverhead, N. Y.  
 Greenpoint National Bank of Brooklyn.  
 Richmond Borough National Bank, Richmond Co.

**RULE XXXV.**

**Composition.**

When a debtor is desirous of making an offer of composition to his creditors, the petition to consider the same must be filed with the Clerk of the Court, and an application made to the Court for an order of reference to the Referee to whom the matter had been referred, directing a meeting of the petitioner's creditors on ten days' notice of said meeting, by mail, to all the creditors mentioned in his schedule, and publication of said notice, once, in the designated newspaper.

**RULE XXXVI.**

The Referee to whom the petition for composition is referred shall, after final consideration of creditors, report the proceedings had before him, with proof of mailing notices of meeting, and the names and addresses of creditors objecting to composition.

**RULE XXXVII.**

On the coming in of the report of Referee on petition for composition, an application must be made to the Court, for an order fixing a day for hearing on the order to confirm the composition.

**RULE XXXVIII.**

If any names of creditors objecting to the composition offered appear on the report of the Referee, the Clerk of the Court shall send notice of said hearing, by mail, to each creditor so objecting, and make proof of mailing.

**RULE XXXIX.**

All creditors voting for, or objecting to, a resolution or offer of composition, must prove their claims and have the same allowed before their vote or objection is recorded.

**RULE XL.**

In all cases where the bond required to be given by the Trustee, appointed by the creditors or Referee, is not greater in amount than two hundred dollars, the Referee to whom the matter is referred may accept the individual bond of the Trustee, so appointed.

**RULE XLI.**

On specifications in opposition to the discharge of a bankrupt being filed, the matter of the specifications may be referred to a special commissioner, to take the evidence and report the same with his opinion thereon to the Court. The party filing the specifications shall deposit with the person to whom the matter is referred an amount sufficient



to cover the expense of taking the proofs and a per diem fee of five dollars for each hearing. Should an adjournment be granted a per diem fee of three dollars shall be paid by the party requesting the adjournment, provided the Referee or commissioner is in actual attendance.

#### RULE XLII.

A bankrupt, petitioning for his discharge in voluntary proceedings, must set forth in his petition that he has not been granted a discharge in bankruptcy within six years.

#### RULE XLIII.

On the presentation of a petition for the adjudication of a bankrupt, the Clerk shall enter on the minutes of the Court the name of the attorney presenting the same, and note the proceedings thereon; and the Clerk is hereby directed to attach the seal of the Court when required, and to sign the order of adjudication, the order of reference, and all orders of publication in the proceeding, when any such orders shall have been granted by the Judge or Court, and such orders shall be entered thereupon.

Page 762, line 15 [**Publisher's Note**]:

Following amendments have been made to Rules of Eastern District of New York under date of Dec. 5, 1916, after publication of the book:

By order of this court, Bankruptcy Rules 11, 12 and 16 were repealed and the following, Rule 11, adopted:

In cases where no assets appear, or where no exemptions are claimed, with respect to property of which a trustee might take physical possession, or where no creditor opposes the bankrupt's claim of exemption, if any proof of debt has been filed, the referee will not appoint a trustee while those conditions are unchanged. Such a case shall not be closed (other than to furnish a certificate to the bankrupt as to compliance with the statute) until the application for discharge has come before the court or the year for such application has elapsed.

## **WESTERN DISTRICT OF NEW YORK.**

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### **RULE I.**

#### **Proceedings in Counties Where There is no Referee or Newspaper.**

In case a petition is filed by or against a bankrupt who resides in any county where there is a vacancy in the office of Referee or where the Referee is disqualified, absent, sick or otherwise unable to act, the reference shall be made to the Referee who is most conveniently located to the bankrupt's residence. In case a petition is filed by or against a bankrupt who resides in a county where there is no designated newspaper, or where the designated newspaper for any reason refuses to act, the notices required by law may be published in a newspaper named by the parties in interest published in the county where the bankrupt resides, or the major part of his property is situated.

### **RULE II.**

#### **Filing Petition; Deposit of Fees.**

All petitions shall be filed with the Clerk at his office in Buffalo. At the time of filing a petition thirty dollars shall be paid to the Clerk by the petitioner, except in cases where a fee is not required by a voluntary bankrupt; being ten dollars for the Clerk, fifteen dollars for the Referee and five dollars for the Trustee. In case the petition is dismissed it shall be the duty of the Clerk forthwith to return to the petitioner the amount deposited for the fees of the Referee and Trustee, respectively. Voluntary petitions must be filed in triplicate and involuntary petitions in duplicate. When the Judge is absent from the district it shall be the duty of the Clerk to enter an order as provided in Form No. 15, reciting the absence of the Judge, and referring the case to the proper Referee. When the Judge is present, a Court order shall be entered as provided in Form No. 14. Fees deposited by the petitioner in an involuntary case must be returned to him by the Trustee out of the estate of the bankrupt in all cases where property sufficient for such purpose comes to the hands of the Trustee.

### **RULE III.**

#### **Petition in Forma Pauperis.**

In case a petition is filed by a proposed voluntary bankrupt which is accompanied by an affidavit under subdivision 2 of section 51 of the Act, it shall be the duty of the Clerk to file said petition without the payment of the fees provided for by law. If the Clerk, or the Referee to whom said petition is referred, has reason to believe such affidavit is false, he may file a certificate to that effect and cause the bankrupt to be examined. If upon such examination the Referee reports in writing that the statements contained in such affidavit are false, and that the bankrupt has or can obtain money with which to pay said fees, such report shall be sufficient proof upon which to base proceedings under subdivision 4 of General Order No. XXXV.

### **RULE IV.**

#### **Referee to Fix Time and Place of Hearings.**

The Clerk shall mail a copy of the order of reference to the Referee, and thereafter all proceedings, except such as are required by the act, or by the general orders, to be had before the Judge, shall be had before the Referee, who shall fix the time when and

the place where he will act upon the matters arising in the case; except that all meetings of creditors must be held in the county of the bankrupt, either at the county seat or at a place more convenient for the parties in interest. If the Referee cannot attend on the day named in the order of reference he may name a subsequent day within ten days thereafter, and give the bankrupt timely notice of the change; but the day first named shall be the day from which the bankrupt shall be subject to the orders of the Court as provided in General Order No. XII.

If the place named in the order of reference be manifestly inconvenient as a place of meeting for the parties in interest, the Referee may fix a more convenient place and give the bankrupt timely notice of the change.

#### RULE V.

##### Involuntary Petition — Notice to Debtor — Reference on Default.

Where an involuntary petition is filed in conformity with law it shall be the duty of the Clerk to issue a subpoena as provided in Form No. 5, stating the time and place when the debtor is to appear. There shall be endorsed upon the subpoena the following:

"Notice to defendant.—It is not necessary for you to appear on the return day of this subpoena. You may appear and plead to the petition at any time within five days after said return day."

In case no pleadings are filed by the bankrupt or any of his creditors the Judge, or, in his absence, the Clerk, will enter the proper order without further appearance or motion on the part of the petitioner. Order of adjudication in involuntary proceedings shall not be entered until the expiration of five days after the return day of the subpoena.

#### RULE VI.

##### Service of Subpoena — Publication.

In involuntary proceedings, if personal service of the subpoena cannot be made by a delivery of a copy thereof to the debtor or to some adult person who is a member or resident in the debtor's family, at his dwelling house or usual place of abode within the district, and if the debtor shall not file his appearance within ten days after the return day of the subpoena, the Court, on proof by affidavit of the foregoing facts, and of the whereabouts of the debtor, will make an order directing such debtor to appear, plead, answer or demur by a day certain to be designated therein, pursuant to section 738 of the United States Revised Statutes, which order shall be served upon such absent debtor, if practicable, wherever found, or if personal service of such order upon such absent debtor is not practicable, such order shall be published as provided in the act; and upon proof of such service or publication of said order, and of compliance with the terms thereof, proceedings shall be had as upon personal service of the debtor within the district.

Upon the petition of one or more of several copartners, where some other member or members of the firm refuse to join in the petition, the like proceedings if there are firm assets, must be had to bring in the other copartners.

#### RULE VII.

##### Pleadings in Involuntary Cases; Trial by Jury.

Prior to the denial of bankruptcy, as provided in Form No. 6, the pleading in involuntary cases on the part of the alleged bankrupt, or any of his creditors who oppose the adjudication, shall conform as nearly as may be to the pleadings of the defendant in an equity action in the District Court of the United States.

In case a jury trial is demanded, as provided by section 19 of the Act, the Clerk shall place the issue on the Calendar of the next regular term of the District Court for trial unless a jury shall be in attendance, in which case it may be added by the Clerk

to the current Calendar. The case shall then proceed in all respects like the trial of any action at common law, except that the Court may frame and send to the jury special questions, presenting the issue to be tried. Upon the coming in of the verdict the Judge may, in accordance therewith, make an adjudication either that the debtor is or is not a bankrupt. In case a jury trial is not demanded the Judge may determine the issues presented by the pleadings, or he may refer the same, or any specified issue, to a special master to ascertain and report the facts with his opinion thereon.

#### **RULE VIII.**

##### **Dismissal of Petition.**

Every application to dismiss a voluntary or involuntary petition, as contemplated by section 59-g of the Bankruptcy Act, must be by petition in writing, signed and verified by the applicant or his attorney of record, and, if made before the bankrupt's schedules have been filed, such application must be accompanied by a list, verified by the bankrupt, of all his creditors, with their addresses. Upon the filing of such petition and list, when required, an order to show cause why such petition should not be granted may be entered by the Clerk. Thereafter, all proceedings, notices and pleas on such petition shall be the same as or similar to those on orders to show cause why discharges should not be granted as the same are fixed by Rule 10.

#### **RULE IX.**

##### **Discharge and Composition — Petition and Report of Referee.**

The petition for a discharge or for a confirmation of a composition must be duly verified and be filed with the Clerk. The petition for a discharge must conform to the provisions of General Order No. XXXI and of Form No. 57. There must also be presented before the final discharge is granted a report or certificate of the Referee that the bankrupt has in all things conformed to the requirements of the Act, that he has committed none of the offenses and done none of the acts prohibited in subdivision b of section 14 of the Act, and that he is, in the opinion of the Referee, entitled to his discharge.

Proof of mailing and publication, as provided in the next succeeding rule, together with his certificate of conformity, shall be sent by the Referee to the Clerk, at Buffalo, N. Y., at least one day prior to the hearing, and the Clerk shall present the same to the Court at the hearing.

#### **RULE X.**

##### **Discharge Order to Show Cause; Opposition of Creditors.**

The order to show cause why a discharge should not be granted or a composition confirmed may be entered by the Clerk or Deputy Clerk. It must state the time and place of hearing, and direct that the Referee give notice as provided in section 58 of the Act to all known creditors and other persons in interest. The notice must be mailed and published once, at least thirty days as to applications for discharge and as to composition ten days prior to said hearing. Proof of mailing and publication must be presented at least one day prior to the return day of the order. If no creditor or other party in interest appears and opposes, the discharge shall be granted. In case a creditor or other party in interest desires to oppose the granting of the discharge, he shall appear on the return day and file a verified specification of the grounds of his opposition, as provided in General Order No. XXXII. The issue thus joined may be referred to the Referee to ascertain and report the facts with his conclusions thereon. Either party may except to said report and the exceptions may be heard by the Judge on any motion day upon the usual notice.

The petitioner may, within five days from the service of a copy of the order of reference, and on giving at least five days' notice personally or eight days' notice by



mail to the objecting creditor, move the Court on any motion day to have the specifications of objections to the discharge or the confirmation of the composition made more certain and definite or within such time may move their dismissal; in default whereof such specifications shall be deemed sufficient to present the questions suggested thereby. Such notice of motion shall also specify the grounds of objection.

#### RULE XI.

##### Confirmation of Composition.

In all cases of composition, except when the offer is made before adjudication, the application for confirmation with notice and proofs of service must be accompanied by the offer and acceptances and the certificate of the Referee, setting forth the amount of the composition fund and place of deposit, the names of all the creditors whose claims are allowed and the amount of the same and the amount to which each is entitled under the composition; also all expenses and allowances, and to whom made and payable.

#### RULE XII.

##### Petitions.

Petitions should state where the debtor has resided, including the street and number, if any, and also where his principal place of business, if any, has been during the preceding six months, or the greater part thereof, and the schedules should state the street and number or the residence, or place of business, of the creditors, so far as known. Petitions by one or more of several copartners should state, in case a discharge from copartnership debts is desired, whether there are firm assets, and, if there are, the petition should further state whether the firm or any other partners, not joining in the petition are solvent or insolvent, and, if insolvent, the place of residence and whereabouts of such other partners, so far as known, or ascertainable, in order that they may be brought in as parties in case they refuse to join in the petition.

Petitions, schedules and other papers filed shall be written, typewritten or printed upon white paper of the size of law cap, approximately thirteen inches long by eight inches wide. All pleadings must be properly indorsed with the name of the Court, the title of the cause, and, if the parties appear by an attorney, his name and office address. If the attorney resides in a city, the street and number must be given.

#### RULE XIII.

##### Notices and How Served.

All notices required to be given under section 58 of the Act shall, in case the Referee so directs, be given by the bankrupt or his attorney in voluntary cases, and by the petitioner or his attorney in involuntary cases, and when so given the person giving the notice shall make return to the Referee in the form of an affidavit with the notice, or a copy thereof, annexed, showing due mailing or publication of said notice as required by law. The affidavits of mailing and of publication may be sworn to or affirmed before any officer authorized to administer oaths under section 20 of the Act. Notice to creditors of meetings subsequent to the first, in cases where there are undivided assets, shall be the same as the notice provided for the first meeting in section 58 of the Act. In cases where there are no assets the Referee may, in his discretion, dispense with the publication of such notice. The original notice shall be signed by the Referee. It shall be printed upon or inclosed within a sealed post-paid wrapper in such a manner that the address and postmark shall, if possible, be on the same paper as the notice, or in the discretion of the Referee, said notice may be printed upon a postal card or other card.



**RULE XIV.**

**Sales of Bankrupt's Property as Amended Should Read.**

The sales of a bankrupt's property authorized by the Act and General Order No. XVIII shall be under the direction of the Referee. Public sales shall be upon the notice required by section 58 of the Act, and such additional notice as the Referee may direct. When notice of the sale of real estate is published the description of the real property to be sold need not be by metes and bounds, but it shall be sufficient to identify and locate the property, and the notice shall contain a reference to the order filed in the Clerk's office where a more specific description as to the metes, bounds, etc., may be found.

**RULE XV.**

**List of Claims and Accounts Transmitted to Clerk.**

General Order No. XXIV shall not be construed to require the Referee to transmit to the Clerk a separate statement of each proof of debt, but only that he shall transmit a list of the claims proved after he has reason to believe that all the claims have been proved against the estate that will be presented.

General Order No. XXVI shall not be construed to require the Referee to transmit to the Clerk a separate account of each case which may be referred to him, but only a statement of his disbursements in all cases and for all causes since his last monthly return.

**RULE XVI.**

**Clerk to Transmit Papers to the Referee.**

The Clerk shall transmit all proofs of claims, and other papers filed with him under General Order No. XX, subsequent to the reference, to the Referee, except such papers which, by the terms of said General Order, are required to be filed with the Clerk alone.

**RULE XVII.**

**Filing of Returns, Reports, Adjudication, Bonds, etc.**

All returns and reports from Referees or other officers of the Court shall be directed to the Clerk of the Court at Buffalo, N. Y., and all returns and reports which by law or the general orders are required to be made to the Judge shall be directed to him in care of the Clerk at Buffalo, N. Y.

It shall be the duty of the Referee to transmit to the Clerk forthwith all adjudications made during the absence of the Judge, and all bonds of Trustees and the orders approving the same within five days of the approval thereof. The Referee shall retain in his possession the papers and records until said case is finally closed. He shall then, within five days, transmit his record book, and all papers in the case to the Clerk, together with a certificate specifying that the case is closed.

**RULE XVIII.**

**Fees of Referee and Trustee, When Paid.**

The Trustee's fee of five dollars deposited with the Clerk shall be paid to the Trustee when the services of the Trustee have been actually rendered and the case has been closed and the Referee has made his return as required by Rule 17. He shall be paid such commissions as may be allowed under section 48 of the Bankruptcy Act, as amended at the time the final dividend is made. The Referee shall be paid his commissions at the same time. In case no Trustee is appointed as provided in General Order No. XV, the Clerk shall, upon filing the certificate of the Referee specifying that the case is closed, the Referee's record book, and his return as provided in Rule 17, pay the five dollars, deposited for Trustee's fee, to the petitioner's attorney.

The Clerk shall pay the Referee the fifteen dollars deposited as fees of the Referee upon receiving the latter's record book, return and certificate that the case has been closed and that his services have been rendered, and in case of a composition, upon the confirmation thereof. Where there are no assets a case may be closed by the Referee and his return and certificate thereof made and filed with the Clerk at the expiration of four months from the date of adjudication, provided no application for the discharge has been made and provided further that if an application for discharge has been made that the same has been granted or refused to the bankrupt.

#### **RULE XIX.**

##### **Money Drawn by Countersigned Checks.**

When money is deposited in the name of the Clerk of the Court, or of a Trustee, it shall not be drawn unless by check signed by said Clerk or Trustee, having on its face the number and title of the cause and countersigned by the Referee in charge. All checks must conform to this rule, and also to the requirements of General Order No. XXIX. The Clerk shall furnish to the depositories a copy of said general order and also a copy of this rule.

#### **RULE XX.**

##### **Referees to Direct Prosecution and Defense of Suits and Allow Amendments.**

The Referee may direct the prosecution and the defense of suits by the Trustee as provided in subdivisions c and d of section 11 of the Act. He may allow amendments to the pleadings and papers which do not involve jurisdictional defects in all matters pending before him, and he shall, in the first instance, have full power and authority over the proof and allowance of claims as provided by section 57 of the Act and General Order No. XXI. When a petition referred to a Referee is insufficient upon its face to confer jurisdiction he shall return the same to the Clerk with a statement of the defects noted thereon, and no further proceedings shall be had thereon until a new or amended petition remedying such defects is filed with the Clerk.

The Referee may, upon his own motion, direct that the schedules be made more definite and certain by requiring the street and number to be given where a creditor resides in a city, and the Referee may direct that the bankrupt furnish any other information regarding his property or his creditors which the Referee may deem essential.

#### **RULE XXI.**

##### **Referees to Grant Stays.**

When a motion for an injunction is pending, or is about to be made, the Referee may, in order to prevent injury to the property of the bankrupt, or otherwise, grant a temporary restraining order staying proceedings until the hearing and decision of said motion. In case all parties in interest agree that said motion be heard by the Referee in charge, they may file with the Referee a written stipulation to that effect. The decision of the Referee on such motion shall be filed with the Clerk, and if the Referee decides that an injunction shall issue, an order to that effect may be made by the Judge.

#### **RULE XXII.**

##### **Referees May Pass upon Relevancy of Testimony and Confine Examinations Within Reasonable Limits.**

Referees may pass upon the competency, materiality and relevancy of evidence in matters properly before them for investigation, and shall have all the powers of the Judge concerning the administration or rejection thereof, and shall note on the record all objections, the rulings thereon and the exceptions which may be taken; and in

cases where testimony is excluded they shall note a brief statement by the party offering the same of the facts he expects to prove thereby. Referees shall limit the inquiry before them, to relevant and material matters, and in case an examination or a cross-examination is unnecessarily prolix, or improperly prolonged, the Referee may, in his discretion, limit the time of such examinations; or he may impose costs, including the fees of the stenographer and other expenses, upon the party responsible for the improper prolongation.

**RULE XXIII.**

**Petitions for Review, Limitation of Time for.**

A petition for review of a Referee's order must be filed with the Referee within ten days after the order is made, unless such time is extended before or after expiration of said ten days, by the Referee or the Court.

**RULE XXIV.**

**Claims Need Not be Approved Where There are no Assets.**

In cases which show no assets the Referee need not formally approve or disallow any claims filed with him, except on special request or motion, but such claims shall be returned with the papers to the Clerk at the conclusion of the case. If, in such a case, assets sufficient to pay a dividend are discovered by the Trustee, such claims shall be allowed, continued or disallowed by the Referee at the first meeting of creditors after it is determined that such estate will pay a dividend.

**RULE XXV.**

**Referees May Make Rules in Proceedings Before Them.**

Referees may make other general or special rules for the guidance of proceedings before them within their respective territorial jurisdictions, and may from time to time alter and amend the same, provided that such rules shall not be inconsistent with the provisions of the act, with the general orders of the Supreme Court, or with these rules.

**RULE XXVI.**

**Powers of Referees.**

The referees heretofore or hereafter appointed for the Western District of New York are hereby, respectively, vested with the jurisdiction which by the Bankruptcy Act of July 1, 1898, and its amendments, and the general orders of the Supreme Court promulgated at the October Term of 1898, the Court or Judge may delegate to or confer upon said Referees; and they are, respectively, empowered and authorized to do all acts, take all proceedings, make all orders and decrees, and perform all duties so authorized to be delegated by said act, and said general orders, without special authority in each case, and under the general authority conferred by this order.

**RULE XXVII.**

**Special Masters, Fees, etc.**

When the issues under Rules 7 and 10 are referred to a special master, he shall be entitled to receive for his services five dollars for each day actually spent in hearing such reference and preparing his report. Such sum shall be chargeable in the first instance to the party opposing the adjudication, discharge or composition, respectively, and indemnity may be demanded by the special master before proceeding with the hearing. In case the petition in an involuntary proceeding be dismissed with costs such sum may be taxed against the petitioning creditors.

If a composition is not confirmed, or is set aside, such sum may, in the discretion of the Court, be ordered paid by the Trustee.

In other cases when matters are referred to the Referee as a special master, requiring services not devolving upon him by virtue of his office, he shall receive a like compensation which shall be chargeable in the first instance to the party bringing on the reference and shall be paid by the party ultimately defeated in such reference.

Should the reference in any of such cases, be unusually difficult or extraordinary, a higher rate of compensation may be paid if stipulated by both parties and sanctioned by the Judge.

RULE XXVIII.

Referee's Expenses.

Referees shall be entitled to collect, as an indemnity against their actual and necessary expenses in the administration of estates, a sum not to exceed six dollars from each case referred to them, which shall be paid by the bankrupt (unless relieved therefrom by order of the Referee or the Judge) in no asset cases, and out of the estate in asset cases; as well as a reasonable sum in addition, dependent upon the probable number of hearings, to be paid out of the estate in asset cases and to be fixed by the Referee or the Judge; provided that each Referee shall, in the reports required by General Order XXVI, detail the amounts so collected, as well as the way in which the same are disbursed, and to that end Rule 15 is modified accordingly.

RULE XXIX.

Monthly Reports by Referees.

Referees will hereafter be required strictly to observe General Order XXVI, and, in making the monthly return of receipts and disbursements therein required, shall substantially conform to the following form:

Referee's Return Under General Order XXVI.

..... County, for the month of ....., 19....

STATE OF NEW YORK,

COUNTY OF .....

}

ss:

....., being duly sworn, says that he is the Referee in bankruptcy for the Count..... of ....., in the Western District of New York, and that the following is a true and complete account of all of his receipts and disbursements for actual and necessary expenses during the month of ....., 19...., in the administration of estates in bankruptcy proceedings referred to him, viz:

Received.

1. Indemnity under General Order X and Rule XXVIII:			
Re.....	No. ....	\$.....	
Re.....	No. ....	.....	\$.....
2. Also for expenses already incurred or not collected by way of indemnity:			
Re.....	No. ....	\$.....	
Re.....	No. ....	.....	.....
Total received .....			\$.....



*Disbursed.*

For office rent .....	\$.....
For stenographer .....	.....
For clerical assistance .....	.....
For traveling .....	.....
For publishing or mailing notices.....	.....
For incidental expenses .....	.....
<hr/>	
Total disbursed .....	\$.....
<hr/>	
Credit (or debit) balance, ....., 19.....	\$.....
Debit (or credit) balance, month previous.....	.....
<hr/>	
Net credit (or debit) balance to date.....	\$.....
<hr/>	
Sworn to before me this .....	
day of ....., 19..	
.....	
.....	

**RULE XXX.**

**Receivers, Appointment of, Allowances to and Accounts of.**

The District Judge of this district shall appoint all receivers in voluntary and involuntary proceedings, make all orders for their direction, make all orders for the disposition of property in the hands of receivers, and on report of the Referee showing compliance with section 48 of the Bankruptcy Act, as amended, finally settle their accounts and allowances. Referees may appoint receivers in voluntary proceedings when the District Judge is absent from the District upon receiving a certificate from the Clerk to that effect.

**RULE XXXI.**

**Allowance to Attorneys, Trustees, Appraisers, etc.**

All allowances made by referees for compensation of attorneys for petitioning creditors or the bankrupt, or the trustee or receivers, and disbursements, fees of appraisers, and allowances and commissions to trustees and special masters to be paid out of the bankrupt estate must be submitted to the District Judge for his approval or modification before the same shall be paid. Referees are directed not to allow any attorney for any receiver or trustee more than twice the statutory allowance of the receiver or trustee for whom he is attorney in the case. If, in the opinion of the Referee, a greater compensation should be awarded, the Referee shall certify concisely to the Court the grounds of his opinion and the amount of the receiver's or trustee's fee allowed. Applications for additional compensation in all cases, either on certificate or independently thereof, shall be heard as motions on the Tuesday Bankruptcy Motion Calendar. (Amended December 31, 1914.)

**RULE XXXII.**

**Attorneys for Receivers, Trustees, Appointment of, etc.**

Receivers and trustees in bankruptcy are directed not to retain as their attorney or counsel the attorney or counsel of the petitioning creditors or of the bankrupt, or the attorney at whose instance the receiver was appointed, or of any creditor, unless a special order authorizing such employment is obtained from the Judge before adjudication, and after adjudication, from the Referee.



**RULE XXXIII.****Attorneys Holding or Voting Proxies.**

Any attorney or counsel who has secured proxies and voted upon the election of Trustee or who is the attorney for persons holding such proxies shall not be retained by the Trustee without first obtaining an order of the Court authorizing such retainer.

**RULE XXXIV.****Inventories, When and Where to be Filed.**

For the convenience of creditors of bankrupts and their attorneys, all inventories made by receivers and trustees of bankrupt estates must be made in duplicate, one of which shall be filed with the Clerk of this Court within ten days after completion, and the other, with the Referee having charge of the case.

**Depositories in Bankruptcy — Western District of New York.**

Cuba National Bank, Cuba, N. Y.  
Salamanca National Bank, Salamanca, N. Y.  
Lake Shore National Bank, Dunkirk, N. Y.  
Merchants' National Bank, Dunkirk, N. Y.  
Bank of Jamestown, Jamestown, N. Y.  
Merchants' National Bank, Elmira, N. Y.  
Second National Bank, Elmira, N. Y.  
Columbia National Bank, Buffalo, N. Y.  
Manufacturers and Traders' National Bank, Buffalo, N. Y.  
Marine National Bank, Buffalo, N. Y.  
Third National Bank, Buffalo, N. Y.  
First National Bank of Batavia, Batavia, N. Y.  
Lincoln National Bank, Rochester, N. Y.  
Fidelity Trust Company, Rochester, N. Y.  
Central Bank, Rochester, N. Y.  
National Bank of Commerce, Rochester, N. Y.  
The National Bank of Rochester, Rochester, N. Y.  
The Exchange Bank, Lockport, N. Y.  
Niagara County National Bank, Lockport, N. Y.  
Niagara Falls Trust Company, Niagara Falls, N. Y.  
Canandaigua National Bank, Canandaigua, N. Y.  
First National Bank, Geneva, N. Y.  
First National Bank, Tonawanda, N. Y.  
Citizens' National Bank, Albion, N. Y.  
Orleans County National Bank, Albion, N. Y.  
Union Bank of Medina, Medina, N. Y.  
Glen National Bank, Watkins, N. Y.  
Exchange National Bank, Seneca Falls, N. Y.  
Citizens' National Bank, Hornell, N. Y.  
First National Bank, Newark, N. Y.  
Bank of Attica, Attica, N. Y.  
Wyoming County National Bank, Warsaw, N. Y.

## DISTRICT OF MASSACHUSETTS.

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### RULE I.

Petitions and schedules shall conform in size and arrangement to the blanks now in use in this district, and other papers filed shall conform to such blanks as nearly as may be, provided, however, that if any paper is presented for filing which is of a different size, the Clerk may in his discretion file it. All papers shall be written legibly, or printed.

### RULE II.

Amendments to the schedule shall be sworn to and filed in triplicate with the Clerk, or with the Referee.

### RULE III.

Each item in the schedule not otherwise filled out, shall be carried out by the entry "nothing."

### RULE IV.

The address of creditors residing in cities and large towns shall be given by street and number. If either street or number is unknown, it shall be so stated in the schedule.

### RULE V.

An individual petition filed by a member of the firm which is not insolvent, shall contain the names and residences of all members of the firm. The schedules of said petition shall show the different classes of debts.

### RULE VI.

The petition of a corporation shall be signed by its treasurer, cashier or chief financial officer. The petition of a banking corporation shall be signed by its president, cashier or treasurer. If by affidavit or otherwise it appears that no such officer is within the district, the petition may be signed by any officer or agent of the corporation having knowledge of the facts, and duly authorized by the petitioner.

### RULE VII.

A bankrupt intending to offer terms of composition to his creditors, may notify the Referee of his intention to do so, before the order for the first meeting is made; and in such case, the Referee shall include in the notice of the first meeting a statement of the terms of composition to be proposed.

### RULE VIII.

In case of composition the deposit shall be sufficient to pay the proposed percentage upon all unsecured debts scheduled by the bankrupt, unless the Court should otherwise order.

### RULE IX.

Upon the acceptance of terms of composition by the creditors, the Referee shall send to the Clerk's office a list of the claims proved, and his report concerning (1) the examination of the bankrupt, (2) the terms of composition and the acceptance thereof, (3) the cost of proceedings before the Referee, including those of the Trustee, (4) the sufficiency of the deposit, and (5) the propriety of confirming the composition.

**RULE X.**

A trustee shall be allowed additional compensation for professional services rendered in the administration of the estate only when the Referee, before the services are rendered, shall have authorized, in writing, the Trustee to make additional charge therefor. This may be done in the discretion of the Referee, when he is of opinion that the services are necessary, can be most efficiently rendered by the Trustee, and are not included in the duties imposed upon the Trustee by the Bankrupt Act.

**RULE XI.**

An itemized account shall be annexed to the proof of debt in every case where this is possible.

**RULE XII.**

An assignment of the right to collect and receive a dividend in bankruptcy or a payment in composition, or a waiver of the deposit in Court of the consideration to be paid by the bankrupt to a creditor in a case where a composition has been offered, shall be acknowledged before an officer authorized to administer oaths, who shall certify that the assignor or waiving creditor is personally known to him.

No such waiver shall be good or valid unless the waiving creditor shall have filed a proof of his claim.

**RULE XIII.**

Upon an order for the examination of a bankrupt or other witness, any person interested may carry on the examination as effectually as the person at whose instance the order was made, and any person interested may take up and support a motion or petition filed by another person.

**RULE XIV.**

A petition under General Order XXVII for the review of a judgment, order or finding made by a Referee, shall be filed within ten days after the order is made, unless the time of filing is extended by the Court. A party to such petition who desires to introduce evidence other than that taken before the Referee shall apply in writing to the Judge for leave to do so, and shall state in his application the substance of the additional evidence to be offered, and the reason of his failure to introduce it before the Referee.

**RULE XV.**

A petition for a rehearing shall set out the special matter or cause for which the rehearing is sought. It shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by oath.

**RULE XVI.**

The attorney of record of the bankrupt shall not act for any creditor or for the Trustee in bankruptcy proceedings.

**RULE XVII.**

Either at the time of filing schedules in bankruptcy, or amendments thereto, or as soon as may be thereafter, the bankrupt shall file with the Clerk or with the Referee, in triplicate, a typewritten list of the creditors alphabetically arranged, with their addresses — one for the use of the Clerk, one for the use of the Referee, and one for the use of the Trustee.

**STANDING ORDERS.****I.**

Motions in all matters in bankruptcy may be marked for hearing on Monday of each week, except during August, at two o'clock p. m.

Any party interested may set down for hearing any of the matters referred to in this rule by delivering or mailing notices thereof in writing to the Clerk of the Court and the opposing party no later than the preceding Thursday, a certificate specifying all parties to whom notice was given and the date of such notice to be filed before the hearing.

## II.

The accounts of referees returned to Court under General Order XXVI shall be filed with the Clerk and may thereafter be examined by any person interested. If no objection to their allowance is filed within ten days of their return they shall stand as allowed without further order.

## III.

Immediately after the disbursement of money to creditors in a bankruptcy case the commissions of the Referee and Trustee on such money shall be due and payable.

## DISTRICT OF CONNECTICUT.

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### RULE I.

Petition should state both debtor's residence and principal place of business during preceding six months or greater part thereof.

### RULE II.

All petitions, schedules, and other papers should be on paper eight (8) inches wide and thirteen (13) inches long.

All papers filed must be legibly written or printed on paper with a margin of at least one and one-half (1½) inches on the upper end of each page, and one (1) inch on the left of each page. They should be properly folded and endorsed outside, (1) with number of case; (2) title of Court; (3) title of case; (4) character of paper; (5) name and address of attorney presenting same.

In involuntary cases, as many copies of the petition should be filed as there are parties defendant, with one more for the Clerk.

### RULE III.

Petitioners making no deposit for officers' fees should be examined by the Referee in regard to their means. If he is not satisfied as to the inability of the bankrupt to make a deposit, he should so report to the Court, and further proceedings will meantime be stayed.

### RULE IV.

Writs of subpoena in involuntary cases should be made returnable on the first Monday after filing of petition, which will allow six days' notice to be served on the debtor. The writ should contain notice to the debtor or defendant that he need not appear on the return day, and that five days are allowed thereafter for such appearance and answer.

In case the debtor is not found to be served, the Marshal shall forthwith make return of such fact to the Court, and the Clerk shall issue an order for publication of notice of pendency of such petition and of the return day thereon two times in some newspaper published near the last place of debtor's abode, and until fifteen days after such notice shall have been published, no adjudication or reference shall be made.

### RULE V.

Notice of the first meeting of creditors shall be published but once unless otherwise specially ordered.

### RULE VI.

A bankrupt intending to offer terms of composition to his creditors may notify the Referee of his intention to do so before the order for the first meeting is made; and in such case the Referee shall include in the notice of the first meeting a statement of the terms of composition to be proposed.

### RULE VII.

Applications for discharge or for confirmation of composition must be filed in Court, and shall be at once referred to the Referee in Bankruptcy having charge of the case, as special master, who may require a deposit in cash to cover the expenses of such application.



Such Special Master shall thereupon appoint a time and place for the consideration of such application, and for the attendance and examination of the bankrupt, and for appearance to show why such application should not be granted; and such Special Master, at least ten days before the time so specified, shall mail to each known creditor a notice thereof; and cause the same to be once published, which notice shall be substantially in the following form: viz.:

District Court of the United States  
District of Connecticut.  
In the matter of . . . . ., Bankrupt.  
(Upon Petition for Discharge.)  
(Upon Confirmation of Composition.)

Notice is hereby given that . . . . . of . . . . . in the County of . . . . . and State of Connecticut, has filed his application, dated . . . . . A. D. 191 . . . . for a discharge from all his debts in bankruptcy (a confirmation of composition of . . . . . per cent proposed by him), and that all his creditors and other persons interested objecting to such discharge (confirmation) may attend before . . . . . Special Master, at his office in . . . . . Conn., on the . . . . . day of . . . . ., 19 . . . . , at . . . . . o'clock, . . . . . M., then and there to examine the bankrupt, and to show cause, if any they have, why such discharge should not be granted (composition should not be confirmed), and to determine whether or not to authorize the Trustee to interpose objections to such discharge.

The Special Master will take all examinations on such application and if specifications in opposition are filed, will take evidence thereon and ascertain and report the facts and forward the papers in the proceedings under such order to the Judge.

Each member of a bankrupt partnership should proceed for a discharge by separate application.

#### RULE VIII.

Specifications in opposition to discharge or confirmation of composition must be verified by the party interposing same, and filed in duplicate with the Special Master within ten days after the said return day one of which duplicates shall be forthwith mailed by the Special Master to the bankrupt or his attorney.

#### RULE IX.

In cases where a person shall be entitled to have a trial by jury and shall have duly applied therefor, the cause may be continued to the next regular term of the District Court.

After a cause shall be placed on the trial calendar it may be passed over to another day of the same term by consent of counsel or order of the Court, but shall not be continued beyond the term save in exceptional cases by order of the Court upon good cause shown by affidavit and upon such terms as the Court shall in its discretion impose. Continuances beyond the term by consent of the parties shall be allowed on condition only that a stipulation be signed by counsel for all the parties and that all costs incurred theretofore be paid. Thereupon an order shall be entered dropping the case from the trial calendar, subject to reinstatement within one year upon application to the court by either party, in which event it shall be heard at the earliest convenient day. If not so reinstated within the year, the suit shall be dismissed without prejudice to a new one.

#### RULE X.

General Order No. XXIV shall not be construed to require Referees to transmit to the Clerk any statement of proof of debt until he shall have reason to believe that all claims have been proved, nor shall Order No. XXVI be construed to require Referees to return to the Judge other than his general monthly reports of expenses which need not apportion such expenses to each particular case, unless required by further order.

**RULE XI.**

The money of the bankrupt estate shall be deposited in designated depositories, in the name of the estate of which the Trustee or Receiver has been appointed, and drawn out only by check or warrant signed by the Trustee or Trustees or Receiver of the estate, and countersigned by the Referee acting in the case, who is hereby designated to countersign such checks. There shall be written or printed on the face of each check so drawn, a brief statement of the general purpose for which the disbursement is made, and the Trustee or Trustees or Receiver of each estate shall keep a record of all checks drawn by him in the manner prescribed in General Order XXIX.

**RULE XII.**

No Trustee shall engage in litigation in behalf of the estate, either for the purpose of securing assets or contesting the claims of a creditor without the approval of the Referee.

**RULE XIII.**

Any order or finding of a Referee may, under proper circumstances be reconsidered, vacated or modified by him at any time while the case in which the order or finding is made is still pending before him.

A petition for review of a Referee's order must be filed with the Referee within ten days after the order is made, unless such time is extended by the Referee.

Notice of the filing of a decision of the Judge upon a petition for review of a Referee's order shall be given to the Referee by the Clerk.

**RULE XIV.**

Costs in actions by creditors in which an attachment has been dissolved by the adjudication in bankruptcy shall be entitled to priority only, where they have necessarily been incurred in good faith, and have resulted in preserving the assets of the debtor. Claims for such costs shall be proven in the name of the creditor, but may be verified by the attorney, in the action as agent or attorney for the creditor.

**RULE XV.**

Referees are authorized to permit the amendment of petitions and schedules upon the application of the bankrupt, and may, upon their own action, require the bankrupt to amend the schedules or petition.

Schedules shall give the last known post office address of the creditors named therein, with street and number when possible.

**RULE XVI.**

When any attorney shall be entitled to the allowance of a fee for professional services rendered to the bankrupt, the petitioning creditor in involuntary proceedings, the Trustee or Receiver, he shall file with the Referee a verified petition stating the nature and character of the services performed by him and the amount he claims therefor, and praying that the same may be allowed. The Referee shall consider such petition, and shall allow said attorney such sum as may be just.

**RULE XVII.**

Within the first month after his appointment and at the expiration of every two months thereafter, the Trustee or Receiver shall file with the Referee a report in writing of the condition of the assets of the estate, giving full detail of his actions as such Trustee or Receiver.

**RULE XVIII.**

Where the bankrupt has no property of value other than such as is exempt, and no assets have come into the hands of the Trustee, it shall be unnecessary to call a final meeting of creditors, and the Trustee shall be entitled to execute a discharge from

his trust by filing a report with the Referee, stating such facts and making it appear to the satisfaction of the Referee that there is no property of the bankrupt available as assets of the estate.

**RULE XIX.**

Where it appears that the bankrupt has no property of value except such as is exempt, the Referee shall not be required to proceed with the administration of the estate, or to take any action therein until the petitioner has deposited with the Referee a sum sufficient to cover the costs of advertising, printing, and other expenses incident to the administration of the estate.

**RULE XX.**

Money deposited to effect a composition shall be deposited in the name of the Receiver or Trustee, if one has been appointed, and checks against the same shall be countersigned by the Referee. If no Receiver or Trustee has been appointed, the deposit shall be in the name of the Referee.

Where any part of the consideration to be distributed under the proposed composition shall consist of promissory notes, they shall be delivered, promptly executed, to the Referee, and upon his order they shall be sent by the Trustee or Receiver by registered mail to the respective creditors entitled to receive them.

**RULE XXI.**

When there are no assets and no Trustee has been appointed, or applied for, after a hearing of the creditors duly called, unless dispensed with by order of Court, the case shall be deemed closed for the purpose of the payment by the Clerk to the Referee of the deposit for his services when a discharge has been granted or refused to the bankrupt, or when three months have elapsed after the first meeting of creditors without any application by the bankrupt for his discharge.

Where a Trustee has been appointed, the case shall be deemed closed and the deposit for his service paid to him on the confirmation of a composition, or on approval of the Trustee's final account and payment of the final dividend, or upon the Trustee's verified report that no assets have come into his hands or were discoverable. When the case is closed, if no Trustee has been appointed, the deposit for Trustee's services shall be paid by the Clerk to the petitioner's attorney.

**RULE XXII.**

The notice required to creditors of application to dismiss bankruptcy proceedings, both voluntary and involuntary, under section 59g, of the Bankrupt Law of July 1, 1898, before adjudication and reference shall be by notice signed by the Clerk and inserted two times in some newspaper published near the residence of the bankrupt named, at least ten days before any order of dismissal shall be made.

After adjudication and reference, the notices given to creditors shall be such as the Referee may order.

If any creditor shall appear in opposition to the dismissal within ten days, the matter in issue shall be placed on the bankruptcy calendar for disposition on the next motion day in bankruptcy at Hartford.

**RULE XXIII.**

When a motion for an injunction is pending or is about to be made, the Referee may, in order to prevent injury to the property of the bankrupt, or otherwise, grant a temporary restraining order staying proceedings until the motion is determined. In case all parties in interest agree that said motion be heard by the Referee in charge, they may file with the Referee a written stipulation to that effect. The decision of the Referee on such motion shall be filed with the Clerk, and if the Referee decides that an injunction shall issue, an Order to that effect may be made by the Judge.

## RULE XXIV.

Referees and Special Masters may pass upon the competency, materiality, and relevancy of evidence in matters properly before them for investigation, and shall have all the powers of the Judge concerning the admission or rejection thereof, and shall note on the record all objections, the rulings thereon, and the exceptions which may be taken; and in cases where testimony is excluded, they shall note a brief statement by the party offering same of the facts he expects to prove thereby. Referees and Special Masters shall limit the inquiry before them to relevant and material matters, and in case an examination or cross-examination is unnecessarily prolix, or improperly prolonged, they may, in their discretion limit the time of such examination, and may impose costs, including the fees of the stenographer and other expenses, upon the party responsible for the improper prolongation.

## RULE XXV.

The Judge will hear matters in bankruptcy on the first Monday of every month, in the year, except July and August, at 2 p. m., unless otherwise ordered.

Parties desiring to be heard upon any motion in any case in which a proper appearance has been made for the opposing party, must serve notice of such motion and copy of the papers upon which it is based, on the opposing party at least five days prior to the date of the expected hearing, and must return such notice or motion papers into the Clerk's office within one day thereafter.

## RULE XXVI.

In petitions for involuntary bankruptcy, or in an affidavit filed with such petitions, the probable value of the assets of the alleged bankrupt shall be stated. In all cases in which such value shall amount to \$1,000 or more, an order appointing one of the Referees in Bankruptcy a Special Master in the case shall be annexed to the petition. Thereupon the Receiver, if one is appointed, or if no Receiver is appointed, the attorney for the petitioning creditors shall make and file with the designated Master, as complete a list of the names and addresses of the creditors as can be immediately ascertained. The Master may call a meeting of the alleged bankrupt's creditors upon five days' notice to the creditors named in such list; at which meeting the Receiver, if one has been appointed, shall make a report of the condition of the estate and the creditors may appoint a committee, or take such action in the case as they see fit.

## RULE XXVII.

When a Receiver is appointed prior to adjudication and order of reference, the Clerk shall forthwith send to the Referee to whom the case is to be referred, a certified copy of the order of appointment, and of any other order made in the case prior to the order of reference.

## RULE XXVIII.

If the entire assets of the estate in excess of the amount necessary to pay expenses of administration and the debts which have priority do not exceed five per cent of the claims which have been proved at the date of the hearing upon the Trustee's first account, and if the estate is then ready to be closed, the first dividend may be omitted, and a final and only dividend may be declared at that time and the estate closed.

## RULE XXIX.

Duplicates of all pleadings shall be made and filed in the Clerk's office, one copy of which shall be forthwith transmitted by mail to the Referee.



## DISTRICT OF NEW JERSEY.

Adopted September 1, 1915.

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### RULE I.

#### Notice of Motions and Other Hearings.

Motions must be noticed and orders to show cause must be made returnable on motion days. If noticed for any other day, except by leave of the Judge, the notice will be treated as a nullity. Notice of motion must be served at least five days before the time appointed for the hearing. The Judge or Referee may, upon an affidavit showing grounds therefor, make an order to show cause why the relief demanded should not be granted. When not otherwise specially provided for by law, all notices of other hearings and proceedings in bankruptcy shall conform to the foregoing provisions as to notices of motion. All proofs of service of notices, notes of issue, etc., shall be in the hands of the Clerk at Trenton by the Saturday prior to the motion day upon which the said motion is to be argued.

### RULE II.

#### Filing Petition — Deposit of Fees.

All petitions and schedules shall be originals (duplicate and triplicate may be in carbon, but each page of all schedules must be signed by the petitioner or bankrupt, and full sets must be filed; if there are no items, the word "none" shall be inserted) and shall be filed in triplicate with the Clerk in Trenton or Newark. At the time of filing a petition thirty dollars shall be paid to the Clerk by the petitioner, except in cases where a petition is filed by a voluntary bankrupt *in forma pauperis*, being ten dollars for the Clerk, fifteen dollars for the Referee and five dollars for the Trustee. In involuntary cases a deposit of ten dollars for service fees shall also be made with the United States Marshal when petition is filed, the unused balance of which he shall immediately return. In case the petition is dismissed it shall be the duty of the Clerk forthwith to return to the petitioner, or his attorney, the unused portion of the amount deposited for the fees of the Referee and Trustee, respectively. When the Judges are both absent from the district it shall be the duty of the Clerk to enter an order as provided in Form No. 15, reciting such absence, and referring the case to the proper Referee. When either of the Judges is present, a Court order shall be entered as provided in Form No. 14.

### RULE III.

#### Proceedings in Counties Where There Is No Referee.

In case a petition is filed by or against a bankrupt who resides in any county where there is no Referee or where the Referee is disqualified, absent, sick or otherwise unable to act, the reference shall be made to such Referee as the Court may select.

### RULE IV.

#### Petition in Forma Pauperis.

In case a petition is filed by a proposed voluntary bankrupt which is accompanied by an affidavit under subdivision 2 of section 51 of the act, it shall be the duty of the Clerk to file said petition without the payment of the fees provided for by law. If the Clerk or the Referee to whom said petition is referred has reason to believe such



affidavit is false, he may file a certificate to that effect and cause the bankrupt to be examined. If upon such examination the Referee reports in writing that the statements contained in such affidavit are false, and that the bankrupt has or can obtain money with which to pay said fees, such report shall be sufficient proof upon which to base proceedings under subdivision 4 of General Order No. XXXV.

#### **RULE V.**

##### **Referees to Fix Time and Place for Hearings.**

The Clerk shall mail a copy of the order of reference to the Referee, and thereafter all proceedings, except such as are required by the act or by the general orders, to be had before a Judge of the Court shall be had before the Referee, who shall fix the time when and the place where he will act upon the matters arising in the case.

If the time and place, or either, named in the order of reference be manifestly inconvenient as a place of meeting for the parties in interest, the Referee may fix a more convenient time and place and give the bankrupt, all creditors and parties in interest timely notice of the change. (See section 55 of the Bankruptcy Act.)

#### **RULE VI.**

##### **Involuntary Petition — Notice to Debtor — Reference on Default.**

Two original involuntary petitions must be filed in cases where there is only one alleged bankrupt, and as many more original petitions shall be filed as there are respondents; all copies, while they may be carbons, shall be signed and verified by the petitioning creditors; it shall then be the duty of the Clerk to enter an order to show cause and issue a subpoena, as provided in Forms Nos. 4 and 5, respectively, returnable on a Court day, stating the time and place when the debtor is to appear. In case it is impossible to make said subpoena returnable on a Court day within the fifteen days provided in section 18 of the act, or for service to be made in time, the Clerk shall make subpoena returnable on either the first or second Court day thereafter without a special order in each case. There shall be indorsed upon the subpoena the following:

“Notice to defendant — It is not necessary for you to appear on the return day of this subpoena. You may appear and plead to the petition at any time within five days after said return day.”

In case no pleadings are filed by the bankrupt or any of his creditors, the Judge, or, in his absence, the Clerk, will enter the proper order without further appearance or motion on the part of the petitioner.

#### **RULE VII.**

##### **Voluntary Appearance and Waiver in Involuntary Cases.**

Alleged bankrupt may file voluntary appearance and waiver of service of petition if desired, in which case the Clerk shall not be required to issue subpoena in the matter, but shall issue the usual order to show cause as per Form No. 4 in order to establish the date of the return day. The solicitor to petitioning creditors shall forthwith notify the alleged bankrupt or his solicitor of such date, and at the same time shall mail him a copy of the petition in bankruptcy. The case shall then proceed in the same manner as if service had been regularly made by the United States Marshal.

When a consent to immediate adjudication is filed by any alleged bankrupt, properly authenticated or otherwise proven to the satisfaction of the Clerk, the Clerk may enter orders of adjudication and reference forthwith.

**RULE VIII.**

**Service of Subpoena — Publication.**

In involuntary proceedings, if personal service of the subpoena cannot be made by a delivery of a copy thereof to the debtor or to some adult person who is a member or resident in the debtor's family at his dwelling-house or usual place of abode within the district and if the debtor shall not file an appearance within five days after the return day of the subpoena, the Court, on proof by affidavit of the foregoing facts, and of the whereabouts of the debtor, will make an order directing such debtor to appear, plead, answer, or demur by a day certain to be designated therein, pursuant to section 738 of the United States Revised Statutes, which order shall be served upon such absent debtor, if practicable, wherever found, or if personal service of such order upon such absent debtor is not practicable, such order shall be published once a week for two consecutive weeks (being three publications) as the Court may direct; and upon proof of such service or publication of said order and of compliance with the terms thereof, proceedings shall be had as upon personal service of the debtor within the district.

Upon the petition of one or more of several copartners, where some other member or members of the firm refuse to join in the petition, the like proceedings, if there are firm assets, must be had to bring in the other copartners.

**RULE IX.**

**Involuntary Case — Triplicate Schedules.**

In involuntary cases the schedules filed by the bankrupt or petitioning creditors (all pages of which shall be signed and blank places filled out as in voluntary cases) shall be filed with the Clerk or with the Referee in charge of the case within ten days from the date of adjudication, and shall be in triplicate — one copy for the Clerk, one for the Referee, and one for the Trustee — as in voluntary cases.

**RULE X.**

**Pleadings in Involuntary Cases — Trial by Jury.**

Prior to the denial of bankruptcy, as provided in Form No. 6, the pleadings in involuntary cases on the part of the alleged bankrupt, or any of his creditors who oppose the adjudication, shall conform as nearly as may be to the pleadings of the defendant in an equity action in the District Court of the United States.

In case a jury trial is demanded, as provided by section 19 of the act, the Clerk shall enter an order as provided in Form No. 7, and the issue shall be noticed for trial on a day to be named by the Court, and shall proceed in all respects like the trial of any action at common law, except that the Court may frame and send to the jury special questions presenting the issues to be tried. Upon the coming in of the verdict the Judge may, in accordance therewith, make an adjudication either that the debtor is or is not a bankrupt. In case a jury trial is not demanded, the Judge may determine the issues presented by the pleadings, or he may refer the same, or any specified issue, to the Referee, as Special Master, to ascertain and report the facts.

**RULE XI.**

**Dismissal of Petition for Want of Prosecution.**

Where a motion is made prior to adjudication to dismiss a petition for lack of prosecution or upon consent, notice must be given to the creditors and all others who have appeared either as petitioners or in opposition to the petition or otherwise; or their consents to the entry of such an order must be obtained.

## RULE XII.

**Vacating Order of Adjudication—Thirty Days.**

After thirty days have elapsed from the date of the order of reference to a Referee of an adjudicated petition in voluntary bankruptcy, and no proceedings have been taken therein by the bankrupt, due notice having been given by the Referee to the bankrupt and his attorney (if petitioner is represented by attorney) to proceed in the matter, and the time not have been enlarged, the Referee shall forthwith report the facts to the Court and apply for an order to show cause, to be served on the bankrupt or his attorney, why the order of adjudication should not be vacated and the petition dismissed.

## RULE XIII.

**Discharges and Compositions.**

a. The petition for a discharge or for a confirmation of a composition must be filed with the Clerk. Such petitions must be duly verified and must conform to the provisions of General Order No. XXXI and of forms Nos. 57 and 61. There must also be presented before the final discharge is granted a report or certificate of the Referee that the bankrupt has, in all things, conformed to the requirements of the act; that he has committed none of the offenses and done none of the acts prohibited in subdivision B of section 14 of the act, and that he is, in the opinion of the Referee, entitled to his discharge.

b. When a debtor, after adjudication, is desirous of making an offer of composition to his creditors, the petition to consider the same must be filed with the Referee to whom the matter is referred, requesting a meeting of the petitioner's creditors to consider the same. In composition proceedings before adjudication, the procedure shall be in accordance with section 12-a of the Bankruptcy Act as amended. The Referee shall call such meeting, and after final consideration of creditors report the proceedings had before him, with proofs of publication and mailing, to the Court. He shall also compute and report what amount is required to be deposited by the bankrupt to complete the terms of the composition. On the coming in of the report of Referee on petition for composition, accompanied by a certificate of deposit of the composition fund, subject to the order of a Judge of this Court, a petition must be filed by the bankrupt with the Clerk for a rule that creditors show cause why said offer of composition should not be confirmed.

c. The petition for confirmation of composition shall set forth that the composition proposed has been accepted in writing by a majority in number and amount of all creditors whose claims have been allowed; that a fund sufficient to pay the consideration proposed, debts having priority, and the costs of the proceedings has been deposited in a depository of the Court, subject to the order of a Judge of this Court. Thereupon a rule will issue upon the creditors to show cause why the proposed composition should not be confirmed. Objecting creditors shall enter an appearance thereto on the return day and file specifications of their objection within ten days thereafter.

d. Proof of mailing and publication shall be sent by the Referee to the Clerk at least two days prior to the hearing, and the Clerk shall present the same to the Court at the hearing.

e. Upon the confirmation of a composition the Clerk shall notify the Referee. The Trustee (if there be one) shall then prepare and mail to all creditors checks for the amounts due them respectively, said checks to be signed by him and countersigned by the Referee, in the same manner so near as may be as similar acts are done by them in the usual administration of bankruptcy estates where there are assets and where no composition has been proposed. In compositions before adjudication, checks shall be prepared, signed and mailed by the Referee.

In case of a surplus, the Referee shall return the same to the person entitled thereto.



## RULE XIV.

## Discharge and Composition — Order to Show Cause — Opposition of Creditors.

The order to show cause why a discharge should not be granted or a composition confirmed may be entered by the Clerk. It must state the time and place of the hearing, and direct that the Referee give notice, as provided in section 58 of the act, to all known creditors and other persons in interest. The notice on discharge must be mailed, and published at least once thirty days prior to said hearing. The notice on composition must be mailed at least ten days prior to said hearing, and shall be published at least once not less than five days prior thereto. Proof of publication and mailing must be presented on the return day of the order. If no creditor or other party in interest appears and opposes, the discharge shall be granted, provided the Referee has certified that bankrupt has complied with the requirements of the act and is entitled to a discharge. If the Referee's certificate of conformity is not received by the return day, said return day shall be adjourned from week to week until it is received. In case a creditor or other party in interest desires to oppose the granting of the discharge, or composition, he shall cause to be filed on the return day his appearance (in which the creditor's name shall appear) in opposition thereto, and file a verified specification of the grounds of his opposition (in triplicate) within ten days thereafter, as provided in General Order No. XXXII. Trustee's appearances shall show authorization of creditors as provided by Section 14 b (6) of the act as amended. The issue thus joined may be referred to the Referee as Special Master, to ascertain and report the facts, with his conclusions thereon. Upon the filing of said report (notice of which shall be given forthwith by the Special Master to the bankrupt and to the objecting creditors, or their solicitors) any party in interest may except thereto within five days, and the exceptions may be heard by the Judge on any motion day upon five days' notice, proof of which shall be filed with the Clerk by the Saturday before the day of argument. In case no exceptions shall be filed to said report within the said five days, the report may be confirmed without further notice.

## RULE XV.

## Consideration and Fees in Compositions.

At or before the first meeting before the Referee to consider an offer of composition, the debtor and his attorney shall file an affidavit or affidavits with the Referee, which shall show each and every amount of money, article or other consideration paid theretofore, or promised or agreed to be paid then or at any subsequent time, directly or indirectly, to any person, as fees or otherwise, in the furtherance of, or having any relation whatever to said composition, except the money or consideration specifically set forth in said composition offer to be paid to creditors, and except the fee for services to be paid to the bankrupt's own solicitor. If any moneys or other consideration has been or is to be paid, directly or indirectly, in the furtherance of said composition to any receiver, trustee, solicitor for a receiver or trustee, or solicitor for the petitioning creditors, there shall likewise be filed by each of them, to whom such payment has been or is to be made, an affidavit or affidavits setting forth the amount thereof, and how and when it has been or is to be made, and the purpose thereof. Brief notice of said amounts, articles or other consideration, if any, shall be sent to all creditors in the notice of the return of the rule to show cause why said composition should not be confirmed.

## RULE XVI.

## Allowance to Special Masters.

a. The issue raised by petitions and answers in involuntary cases, where jury trial is not demanded, and upon specifications against discharge or confirmation of composition, shall be referred to the Referee as a Special Master, and he shall be entitled

to receive for his services ten dollars for each day (with proportionate rates according to the time occupied) actually spent in hearing such reference and preparing his report, and ten cents for each folio of testimony taken and twenty cents for each folio of his report. Such sum shall be chargeable in the first instance to the party opposing the adjudication, discharge or composition respectively, and indemnity may be demanded by the Referee before proceeding with the hearing. In case the petition in an involuntary proceeding be dismissed with costs, such sum may be taxed against the petitioning creditors.

b. If a composition is not confirmed or is set aside, such sum may, in the discretion of the Court, be ordered paid by the Trustee.

c. In other cases, when matters are referred to the Referee as a Special Master to take testimony and report his finding, requiring services not devolving upon him by virtue of his office as Referee, he shall receive a like compensation, which shall be chargeable in the first instance to the party bringing on the reference, and shall be paid by the party ultimately defeated in such reference. Should such reference be unusually difficult or extraordinary, a higher rate of compensation may be paid if ordered by the Judge.

d. In cases where references are made to Special Masters under section 21-a, or in similar cases where testimony is to be taken but no findings are to be filed, the allowance shall be four dollars per day (with proportionate rates according to the time occupied), and ten cents for each folio of testimony taken.

e. For any copy of the testimony furnished by the Special Master, he shall be entitled to receive ten cents per folio from the party requesting it, not to be charged as an expense to the estate.

#### RULE XVII.

##### Filing of Returns, Reports, Bonds, etc.

All returns and reports from Referees, or other officers of the Court, shall be directed to the Clerk of the Court at Trenton, and all returns and reports which by law or the general orders are required to be made to the Judge, shall be directed to him in care of the Clerk at Trenton, or to said Clerk.

It shall be the duty of the Referee to transmit to the Clerk all appointments of Trustees and Receivers immediately, and all bonds of Trustees and the orders approving the same, and all self-approved bonds of Receivers within five days after the approval thereof. The Referee shall retain in his possession the papers and records until said case is finally closed. He shall then, within five days, transmit his record-books and all papers in the case to the Clerk, together with a certificate specifying that the case is closed, also the Referee's Memoranda of Data for Bankruptcy Statistics.

#### RULE XVIII.

##### Fees of Clerk, Referee and Trustee—When Paid.

The Trustee's fee of five dollars, deposited with the Clerk, shall be paid to the Trustee upon the certificate of the Referee that the services of the Trustee have been actually rendered and that the case has been closed. He shall be paid such commissions as may be allowed by the Court, under section 48 of the act, upon the order of the Referee at the time the dividend is made. The Referee shall be paid his commissions at the same time. In case no Trustee is appointed, as provided in General Order No. XV, the Clerk shall, upon the certificate of the Referee, return the five-dollar deposit to the petitioner.

In every case the Clerk shall be entitled to receive the filing fee of ten dollars, except as provided in *in forma pauperis* cases. The Clerk shall pay to the Referee the fifteen dollars deposited as a fee of the Referee, upon receiving the latter's certificate that the case has been closed and that his services have been rendered. Where there



are no assets the case shall be deemed closed for the purpose of the payment of said fees to the Referee and Trustee when a discharge has been granted or refused to the bankrupt, or if no application for a discharge has been made at the expiration of two months from the date of the adjudication. In cases where there are assets the case shall be deemed closed upon the confirmation of a composition or the payment of the final dividend.

**RULE XIX.**

**Money Drawn by Countersigned Checks.**

When money is deposited in the name of the Clerk of the Court, or of a Trustee, it shall not be drawn unless by check, signed by said Clerk or Trustee, having on its face the title of the cause and countersigned by a Judge of the Court or by the Referee in charge.

All checks must conform to this rule, and also to the requirements of General Order No. XXIX. The Clerk shall furnish to the depositories a copy of said general order, and also a copy of this rule.

**RULE XX.**

**Referees to Direct Prosecution and Defense of Suits and Allow Amendments.**

The Referee may direct the prosecution and the defense of suits by the Trustee, as provided in subdivisions C and D of section 11 of the act. He may allow amendments to the pleadings and papers which do not involve jurisdictional defects in all matters pending before him, and he shall, in the first instance, have full power and authority over the proof and allowance of claims, as provided by section 57 of the act, and General Order No. XXI. When a petition referred to a Referee is insufficient upon its face to confer jurisdiction, he shall return the same to the Clerk with a statement of the defects noted thereon, and no further proceedings shall be had thereon until a new or amended petition remedying such defects is filed with the Clerk.

The Referee may, upon his own motion, direct that the schedules be made more definite and certain, and the Referee may direct that the bankrupt furnish any other information regarding his property or his creditors which the Referee may deem essential.

**RULE XXI.**

**Referees to Grant Stays.**

When a motion for an injunction is pending, or is about to be made, the Referee may, in order to prevent injury to the property of the bankrupt, or otherwise, grant a temporary restraining order staying proceedings until the hearing and decision of said motion. In case all parties in interest agree that said motion be heard by the Referee in charge, they may file with the Referee a written stipulation to that effect. The decision of the Referee on such motion shall be filed with the Clerk, and if the Referee decides that an injunction shall issue, an order to that effect may be made by the Judge.

**RULE XXII.**

**Previous Application Not Made.**

All petitions for receivers, injunctive or other relief shall contain an averment that such or similar application has not been made elsewhere.

**RULE XXIII.**

**Rebate on Bonds.**

In all cases where a Receiver has been appointed, either by the Court or by a Referee, Trustees shall hereafter obtain their bonds from the same Surety Company which furnished the Receiver's bond, and shall obtain proper rebate on the premium for

Receiver's bond when same ceases by the qualification of the Trustee and is thereby merged into the Trustee's bond, carefully accounting therefor in Receiver's account and petition for allowances.

#### **RULE XXIV.**

##### **Referees May Pass upon Relevancy of Testimony and Confine Examinations Within Reasonable Limits.**

Referees may pass upon the competency, materiality and relevancy of evidence in matters before them, and shall have all the powers of the Judge concerning the admission or rejection thereof, and shall note on the record all objections, the rulings thereon and the exceptions which may be taken; and in cases where testimony is excluded they shall note a brief statement by the party offering the same of the facts he expects to prove thereby. Referees shall limit the inquiry before them to relevant and material matters, and in case an examination or a cross-examination is unnecessarily prolix, or improperly prolonged, the Referee may, in his discretion, limit the time of such examination; or he may impose costs, including the fees of the stenographer and other expenses, upon the party responsible for the improper prolongation.

#### **RULE XXV.**

##### **Receivers and Trustees to Use Original Testimony.**

Receivers and Trustees shall use the original (Referee's or Court) copy of testimony, and shall not order, at the expense of the estate, a copy for their own use; provided that the Referee may, special reason appearing therefor on verified petition, order one copy to be made, to be charged to the estate, same not to cost more than five cents per folio.

#### **RULE XXVI.**

##### **Hearing of Question Certified by Referee.**

After a question has been certified by the Referee pursuant to General Order No. XXVII, and as provided in Form No. 56, the papers shall be filed with the Clerk, and the hearing may be brought on before the Judge upon any motion day by either party by giving five days' notice.

Petition to review an order of a Referee shall be filed with said Referee within five days after being notified of the entry of such order.

#### **RULE XXVII.**

##### **In Relation to Franchise and Other Taxes.**

In all bankruptcy cases wherein there are assets coming under charge of a Receiver or Trustee, it shall be the duty of the Receiver and of the Trustee, in case no Receiver has been appointed, or the duty shall not have been performed by the Receiver, forthwith to ascertain from the proper sources what taxes, if any, including franchise taxes, are claimed to be due and owing by the bankrupt to the United States, the State of New Jersey, or to the city, town or other municipality in which the bankrupt resides, or in which his estate, or any part thereof, is situate, and to make a written report thereof to the Referee if the case shall have been referred to one, otherwise to the Court, specifying the unpaid taxes upon each piece of property, so far as the same are shown on the tax lists or duplicates, and also the franchise taxes, if any, and the years for which any such taxes have been imposed, to the end that such order may be made in relation thereto, if any, as may be deemed expedient.

#### **RULE XXVIII.**

##### **Referees May Make Rules in Proceedings Before Them.**

Referees may make other general or special rules for the guidance of proceedings before them within their respective territorial jurisdictions, and may from time to time

alter and amend the same, provided that such rules shall not be inconsistent with the provisions of the act, with the general orders of the Supreme Court or with these rules.

**RULE XXIX.**

**Powers Delegated to Referees.**

The Referees heretofore or hereafter appointed for the district of New Jersey are hereby respectively vested with the jurisdiction which, by the Bankruptcy Act of July 1, 1898, and the general orders of the Supreme Court, promulgated at the October Term of 1898, the Court or Judge may delegate to or confer upon said Referees; and they are respectively empowered and authorized to do all acts, take all proceedings, make all orders and decrees and perform all duties so authorized to be delegated by said act and said general orders without special authority in each case and under the general authority conferred by this order.

**RULE XXX.**

**Special Order of Judge.**

In cases not provided for by the Bankruptcy Act of 1898, the general orders or these rules, the practice of the District Court shall be subject to the special order of a Judge.

**RULE XXXI.**

**Authorization to Employ Auctioneers.**

In settlement of accounts of receivers or trustees no allowance shall be made for fees paid or incurred for auctioneers, nor shall any auctioneer conduct any sale unless his employment has first been authorized by a Judge or the Referee to whom the matter has been referred, and the auctioneer to be employed designated by the Judge or Referee.

**RULE XXXII.**

**Authorization to Employ Counsel.**

In the settlement of accounts of receivers and trustees no allowance shall be made for counsel or solicitor's fees, unless the employment of counsel or solicitor has been first authorized by order of the Judge or Referee to whom the matter has been referred; and where a solicitor has been appointed Receiver or Trustee, no such order shall be made, unless it clearly appears that litigation or other cause makes the same necessary or advisable.

**RULE XXXIII.**

**Certificates of Review.**

All Referees shall comply literally with General Order No. XXVII of the Supreme Court as to Review matters, and shall:

1. Certify the question presented.
2. Prepare and send up a summary of the evidence relating to such question.
3. The findings and the reasons therefor. (Wherever practical separate the findings of fact from the findings of law.)
4. The order.

The above shall refer to Masters on references so far as same may be applicable.

**RULE XXXIV.**

**Referee's Expenses and Fees.**

There shall be allowed as part of the expense the following fees:

1. Paid for advertisements (vouchers annexed).
2. For all clerical aid in preparing advertisement and notices to creditors of first meeting, mailing the same, and proof thereof, keeping register, files and

records, and preparing typewritten memoranda of proceedings prior to the first meeting of creditors, including stationery, envelopes, printing, letters, messages, and all petty expenses..... \$5 00

(In the final account this item may be called "clerical aid, etc., prior to first meeting.")

3. For similar clerical aid for each of the matters mentioned in section 58, subdivision a ..... 5 00

4. If notices to creditors exceed twenty in number, in addition to the above for each notice in excess of twenty up to fifty (the number of creditors to be stated) . . . . . 10

5. For each notice in excess of fifty (all special notices to be paid for at the same rates by the party asking them)..... 05

6. For office accommodations and for clerical aid in taking and keeping notes and records of proceedings at first meeting of creditors up to choice or appointment and qualification of Trustee..... 2 50

7. For every other meeting of creditors, including any and every adjourned meeting . . . . . 1 50

8. For clerical aid in taking and perpetuating testimony on the examination of the bankrupt or other persons before the Referee (where the parties do not agree with the Referee's approval in taking such examination by themselves elsewhere), whether taken in long-hand or transcribed from stenographer's notes, to be paid by the party examining the bankrupt or witness, per folio..... 10

9. For any copy of testimony, to be paid by the party ordering the same, per folio ..... 10

10. For clerical aid in filing, recording and preserving any interlocutory order made by the Referee, to be paid by the party procuring it, each..... 10

11. For copies of orders or other papers, to be paid by the party ordering them, per folio..... 10

12. Clerical aid in receiving, indorsing, filing, recording and preserving proofs of claims, to be paid out of the estate..... 25

13. Expenses of appraisers in appraising nominal assets and reporting..... 3 00

14. In composition proceedings before adjudication, the \$15 deposited with the Clerk in the filing fee.

15. When an indemnity deposit is made with a Referee by or on behalf of a bankrupt, the unused portion thereof may be applied by the Referee to compensate him for filing claims in no-asset or in insufficient asset cases, so far as it may extend and be applicable.

#### RULE XXXV.

##### Newspapers.

The following newspapers are hereby designated in pursuance of section 28 of the Bankruptcy Act for publication of official notices and orders:

<i>County.</i>	<i>Newspaper.</i>	<i>Address.</i>
Atlantic .....	Evening Union .....	Atlantic City.
Bergen .....	Bergen County Democrat.....	Hackensack.
Burlington.....	New Jersey Mirror .....	Mt. Holly.
Camden .....	Camden Courier .....	Camden.
Cape May .....	Star and Wave.....	Cape May City.
Cumberland .....	Bridgeton Evening News.....	Bridgeton.
Essex .....	{ Newark Evening Star.....	Newark.
	{ Newark Evening News.....	Newark.
Gloucester .....	Gloucester County Democrat .....	Woodbury.



<i>County.</i>	<i>Newspaper.</i>	<i>Address.</i>
Hudson .....	{ Jersey Journal .....	Jersey City, or
	{ Observer .....	Hoboken.
Hunterdon .....	Hunterdon County Democrat.....	Flemington.
Mercer .....	Daily State Gazette.....	Trenton.
Middlesex .....	New Brunswick Home News.....	New Brunswick.
Monmouth .....	Long Branch News.....	Long Branch.
Morris .....	True Democratic Banner.....	Morristown.
Ocean .....	Times and Journal.....	Lakewood.
Passaic .....	Paterson Morning Call.....	Paterson.
Salem.....	Salem Sunbeam .....	Salem.
Somerset .....	Unionist-Gazette .....	Somerville.
Sussex .....	New Jersey Herald.....	Newton.
Union .....	Summit Record .....	Summit.
Warren .....	Belvidere Apollo .....	Belvidere.

**RULE XXXVI.**

**Depositories for Money of Bankrupt Estates.**

The following banking institutions are hereby designated in pursuance of section 61 of the Bankruptcy Act as depositories for money of bankrupt estates:

<i>Address.</i>	<i>Depository.</i>
Asbury Park .....	Asbury Park & Ocean Grove Bank.
Asbury Park .....	Seacoast National Bank.
Atlantic City .....	Second National Bank.
Atlantic City .....	Guarantee Trust Co.
Belvidere .....	Belvidere National Bank.
Bridgeton .....	Bridgeton National Bank.
Burlington .....	Mechanics National Bank.
Camden .....	Broadway Trust Co.
Camden .....	Camden Safe Deposit and Trust Co.
Camden .....	Central Trust Co.
Camden .....	Security Trust Co.
Cape May .....	Merchants National Bank.
Freehold .....	Central National Bank.
Hackensack .....	Peoples National Bank.
Hackensack .....	Hackensack Trust Co.
Hoboken .....	Second National Bank.
Hoboken .....	Hoboken Trust Co.
Jersey City .....	First National Bank.
Jersey City .....	Commercial Trust Co. of N. J.
Jersey City .....	N. J. Title, Guar. and Trust Co.
Jersey City .....	Union Trust Co. of N. J.
Long Branch .....	Citizens National Bank.
Millville.....	Mechanics National Bank.
Montclair .....	Bank of Montclair.
Morristown .....	National Iron Bank.
Morristown .....	First National Bank.
Mount Holly .....	Union National Bank.
Newark .....	Fidelity Trust Co.
Newark .....	Federal Trust Co.
Newark .....	Union National Bank.
Newark .....	Merchants National Bank.



<i>Address.</i>	<i>Depository.</i>
Newark .....	Essex County National Bank.
Newark .....	National Newark Banking Co.
Newark .....	Broad and Market National Bank.
Newark .....	Washington Trust Co.
Newark .....	Newark Trust Co.
Newark .....	Ironbound Trust Co.
New Brunswick .....	National Bank of New Jersey.
New Brunswick .....	Peoples National Bank.
New Brunswick .....	New Brunswick Trust Co.
Newton .....	Sussex National Bank.
Ocean City .....	Ocean City Title and Trust Co.
Orange .....	Second National Bank.
Passaic .....	Peoples Bank and Trust Co.
Passaic .....	Passaic National Bank.
Paterson .....	Paterson National Bank.
Paterson .....	German-American Trust Co.
Paterson .....	Hamilton Trust Co.
Paterson .....	Citizens Trust Co.
Perth Amboy .....	First National Bank.
Plainfield .....	Plainfield Trust Co.
Somerville .....	First National Bank.
South Amboy .....	First National Bank.
Trenton .....	Mechanics National Bank.
Trenton .....	Broad Street National Bank.
Trenton .....	Trenton Trust and Safe Deposit Co.
Trenton .....	Mercer Trust Co.
Trenton .....	Trenton Banking Co.
Trenton .....	First National Bank.
Vineland .....	Vineland National Bank.
Woodbury .....	Farmers & Mechanics National Bank.

*Subsequently Added.*

Bayonne .....	Bayonne Trust Co.
Closter .....	Closter National Bank.
Dunellen .....	First National Bank.
Hoboken .....	Trust Co. of New Jersey.
Elizabeth .....	Union County Trust Co.
Jersey City .....	Lincoln Trust Co.
Newark .....	National State Bank.

**RULE XXXVII.****Repealer and Adoption of Bankruptcy Rules.**

All bankruptcy rules previously adopted in conflict with any of these rules are hereby repealed, and these rules shall go into effect on September 1, 1915.

## EASTERN DISTRICT OF PENNSYLVANIA.

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In addition to notice heretofore provided for the advertisement in the "Public Ledger," a brief notice shall also be published once in the "Legal Intelligencer" in each bankruptcy case from the county of Philadelphia:

"(1) Of first meeting of creditors, stating the time and place and the name of the referee.

(2) Of the appointment of the trustee stating his name and residence or place of business.

(3) Of the time and place of hearing upon the bankrupt's petition to be discharged." (Minute Book D. C. Vol. 2 in Bankruptcy, p. 12.)

The following rules in bankruptcy went into effect December 10, 1904:

Unless the petition be afterwards allowed by a Judge of the District Court for cause shown after notice to opposing interests, a review of any action or order of a Referee must be asked for by petition presented to him before the expiration of the tenth day after such action is taken or order is made, with this exception, namely: A review of the admission or rejection of evidence, if such admission or rejection has been duly objected to at the time, may be asked for within ten days after the Referee has filed his decision in the proceedings wherein the evidence was offered. Referees are instructed to disregard petitions for review when presented after the expiration of the period named, unless accompanied by an order of allowance from a Judge of the District Court.

Prompt notice of filing of decisions upon any subject shall be given by the referee to counsel interested.

The following rule was adopted by the United States Circuit and District Courts, September 27, 1905:

### Rule III, Section 4.

Rule III, Section 4. Attorneys and Counsellors-at-Law, admitted to practice in this Court, who are not residents of the Eastern District of Pennsylvania, and who do not maintain an office in said District for the regular transaction of business, shall, in each case or proceeding in which they appear, have a resident associate counsel who maintains an office in said District, upon whom all notices, rules and pleadings may be served in accordance with the rules and practice of this Court, and who may be required to attend before the Court, Clerk, Commissioners, Auditors, Assignees, Trustees, Referees or other officer of the Court, or before Notaries Public in cases where testimony may be taken before them in accordance with the rules and practice of the Court. The attendance of said Associate Counsel shall be a sufficient appearance for the party or parties whom they so represent.

### Additional Rule in Bankruptcy.

Unless a shorter time shall be fixed by special order, forty-eight hours' written notice of an application for the appointment of a Receiver shall be given (a) to the bankrupt or his attorney, (b) to all known creditors and other parties in interest, so far as practicable, and also (c) to their attorneys. The notice shall state the names of the applicants and the day, hour and place of hearing. At the hearing, the attorney for the application shall present an affidavit that notice has been given, setting out a copy thereof, the date of mailing, or of other service, and the names and addresses of the parties thus notified.

No attorney shall be heard for or against the petition until he has filed his appearance in writing, which shall state the names and addresses of the persons whom he represents and the nature and amounts of their respective claims.

No motion for leave to intervene, if it is to be followed by a petition for the appointment of a receiver on behalf of the intervening creditor, will be entertained unless notice of the motion has been given to the attorney for the petitioning creditors.

This rule shall apply to similar motions before a referee. It shall govern all applications and motions presented on or after August 12, 1908.

And now, this 9th day of December, A. D. 1909, it is ordered by the Court:

In addition to the notices by advertisement in the "Legal Intelligencer" provided for by the order of May 18, 1899, a brief notice shall also be published once in that journal (4) of the time and place of hearing a petition for dismissal of the proceeding; (5) of the time and place of hearing upon a petition for the confirmation of a composition with creditors; and (6) of the time and place of any sale of real or personal property by a Receiver or Trustee in bankruptcy.

## WESTERN DISTRICT OF PENNSYLVANIA.

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### RULE I.

#### Powers Delegated to Referees.

A. The Referees heretofore or hereafter appointed for the Western District of Pennsylvania are hereby, respectively, vested with the jurisdiction which, by the Bankruptcy Act of July 1, 1898, and the general orders of the Supreme Court, promulgated at the October Term, 1898, the Court or Judge may delegate to or confer upon such Referees; and they are, respectively, empowered and authorized to do all acts, take all proceedings, make all orders and decrees, and perform all duties so authorized to be delegated by said acts, and said general orders, without special authority in each case and under the general authority conferred by this order.

B. Referees may make rules for the guidance of proceedings before them within their respective territorial jurisdictions, and may from time to time alter and amend the same, provided that such rules shall not be inconsistent with the provisions of the act, with the general orders of the Supreme Court or with these rules.

### RULE II.

#### Referees to Regulate Evidence.

Referees may pass upon the competency, materiality and relevancy of evidence in matters before them, and shall rule on the admission or rejection thereof, and if desired note on the record all objections, and the rulings thereon; where testimony is excluded they shall, if requested, note a brief statement by the party offering the same of the facts he expects to prove thereby. Referees shall limit the inquiry before them to relevant and material matters, and in case an examination or cross-examination is unnecessarily prolonged, the Referee may, in his discretion, limit the time of such examination; or he may impose costs, including the fees of the stenographer and other expenses, upon the party responsible for the improper prolongation.

### RULE III.

#### Referees to Direct Prosecution and Defense of Suits and Allow Amendments.

Section 1. Referees may direct the prosecution and defense of suits by trustees as provided in subdivisions b and c of section 11 of the Bankrupt Act. They may allow amendment to the pleadings and papers which do not involve jurisdictional defects in all matters pending before them, and they shall, in the first instance, have full power and authority over the proof and allowance of claims, as provided by section 57 of the act and general order, No. XXI. When a referee deems a petition referred to him insufficient upon its face to confer jurisdiction he shall return the same to the Clerk, with a statement of the defects noted thereon, and no further proceedings shall be had thereon until the further order of the Court.

§ 2. The Referees may, of their own motion, direct that schedules be made more definite and certain, and that the bankrupt furnish any other information regarding his property or his creditors which the Referee may deem essential.

**RULE IV.****Injunctions.**

Where, after an adjudication and reference, an application for an injunction is made to the Referee in charge of a case, he may hear the same and either refuse it or order the motion for such injunction to be heard before the Judge, at a time not more than 10 days thereafter, and grant a temporary restraining order pending said motion. The application and all proceedings thereon shall be at once certified and returned by the Referee to the Court.

Where the parties agree in writing that the motion for an injunction shall be heard and decided by the Referee, he may proceed to so hear and decide the same. If he decides that an injunction shall issue, he shall so report to the Clerk, who shall thereupon issue the same, and any party objecting may within 10 days after the issue thereof move the Judge to dissolve said injunction.

**RULE V.****Attorney for the Estate and His Duties.**

Unless specially authorized by the Court, receivers and trustees in bankruptcy shall not retain as their attorney, the attorney of the bankrupt, of the petitioning creditors, of the person applying for the appointment of a Receiver, or of any creditor, and trustees shall not retain as their attorney any attorney who has obtained proxies or voted upon the election of such trustees, or who is an attorney for persons holding such proxies.

**RULE VI.****Fees of Counsel.**

Subject to revision by the Court, Referees shall have power to fix or reduce the fees of counsel for services claimed or charged in accounts. They may exercise such power of their own motion and without objection made.

**RULE VII.****Review of Referee's Ruling, etc., by the Judge.**

When a review by the Judge of any order, ruling or decision of a Referee is desired, an objection shall be made and noted on the record at the time of the ruling or making of the order objected to, and a certificate in the prescribed form shall be presented to the Referee for his signature within two days of any such order, ruling or decision, but the Referee may enlarge the time by order in any particular case. Such certificate, when signed by the Referee, shall be filed forthwith in the Clerk's office. A failure to comply with this rule shall be held a waiver of the right to review upon certificate unless on special order thereafter made by the Referee or Judge. The opinion and decision of the Judge, together with the certificate on which it is made, and the papers, if any, accompanying the same, shall be remitted by the Clerk to the Referee, who shall file them as part of the record in the case.

**RULE VIII.****Real Estate Sales.**

All sales of real estate shall be ordered by the Referee upon the petition of the Trustee, setting forth under oath the facts needful for the information of the Court, and shall be public or private ones, as directed by the Referee, and either for cash or partly on credit and partly for cash; all public sales shall be advertised for at least ten days by handbills, posted in at least 10 public places in the county in which the land is situated, and by publication at least once a week for at least four weeks prior



to such sale, in at least one newspaper printed, regularly issued, and having a general circulation in the county where the real estate proposed to be sold is situated; the notice shall, among other things, describe the real estate to be sold, and the sale shall take place at the Court House of the county in which the property is situated or upon the premises. Such public sale shall be made under the supervision of the Trustee, with power to adjourn the same. Returns of all sales shall be made to the Referee, by whom the same shall be confirmed *nisi*, with leave to file with him exceptions in 10 days thereafter. In case no exceptions are filed, the Referee shall, after the expiration of said 10 days, certify the petition, order and return to the Judge, who shall confirm the same and order the delivery of the necessary deed, or deeds, by the trustee to the purchaser, or purchasers. In case exceptions are filed, the Referee shall hear and decide the same in the first instance, and shall thereafter certify the petition, order of sale, return, exceptions and testimony, together with his opinion thereon, to the Judge, who shall thereupon review and determine said exceptions and may set aside said sale or confirm the same and order the Trustee to deliver the deed, or deeds, to the purchaser, or purchasers. Where application is made to sell real estate, clear and divested of liens, written notice shall be given of the application to the lienors. In such cases the Referee shall have power to direct that in case a lienor purchase the land, he may receive credit for a due proportion of his lien on account of the purchase price.

#### RULE IX.

##### Reports and Accounts of Trustees.

A. The reports of trustees provided for by section 47, subdivision 10, of the Act, showing the condition of estates, shall be filed with referees. In case they are not filed as above, referees shall order them to be filed forthwith. When the funds reported warrant, referees shall declare dividends upon prior and allowed claims, as provided in section 65.

B. When a final account is filed it shall include the administration of the entire estate. The Referee shall give to creditors notice of a meeting, to be held at least 20 days thereafter, to examine and consider the same. Exceptions may be filed at or before such meeting. The Referee shall dispose of the same and declare a final dividend.

#### RULE X.

##### List of Claims and Accounts Transmitted to Clerk.

General Order No. XXIV shall not be construed to require the Referee to transmit to the Clerk a separate statement of each proof of debt, but only that he shall transmit a list of the claims proved after he has reason to believe that all the claims have been proved against the estate that will be presented.

General Order XXVI shall not be construed to require the Referee to transmit to the Clerk a separate account of each case which may be referred to him, but only a statement of his disbursement in all cases and for all causes since his last monthly return.

#### RULE XI.

##### Notices: How Served.

Section 1. All notices required to be given under section 58 of the Act shall, in case the Referee so directs, be given by the bankrupt, or his attorney, in voluntary cases, and by the petitioner, or his attorney, in involuntary cases; the person giving the notice shall make return to the Referee in the form of an affidavit with the notice, or copy thereof, annexed, showing due mailing and publication of said notice as required by law. The original notice shall be signed by the Referee. It shall be printed upon or enclosed within a sealed, postpaid wrapper in such a manner that the address and postmark shall, if possible, be on the same paper as the notice; or, in the discretion

## 798 RULES IN WESTERN DISTRICT OF PENNSYLVANIA.

of the Referee, said notice may be printed upon a postal or other card. It is not intended by this rule to prohibit the use of "official envelopes."

Section 2. Notice to creditors of meetings subsequent to the first in cases where there are undivided assets shall be given, not only to those whose names appear in the schedules filed, but also to such additional ones whose claims have been duly proved and allowed by the Referee.

Section 3. Notice of petitions filed with the Referee for interlocutory orders in the case shall be given as directed by the Referee.

### RULE XII.

#### Referees to Transmit Bonds, etc., to Clerk.

It shall be the duty of referees to forthwith transmit to the clerk all bonds of trustees. The Referee shall retain in his possession all other papers and records until said case is finally closed. He shall then within five days transmit his records, books and all papers in the case to the clerk, together with a certificate that the case is closed.

### RULE XIII.

#### Pleadings: How Prepared.

All petitions, schedules and pleadings must be upon white paper, approximately 14 inches long by 8½ inches wide. All pleadings must be properly endorsed with the name of the court, the title of the cause, and, if the parties appear by attorney, his name and office address. If the attorney resides in a city, the street and number must be given.

### RULE XIV.

#### Clerical Requirements.

A. The petition for adjudication shall be signed in the full christian and surname of the petitioner, and the petition for discharge in the same manner; in other places the customary signature of the signer may be used.

B. Full sets of schedule blanks must be filed. If there are no items applicable to any particular blank, such facts should be stated in said blank. Each schedule sheet must be signed.

C. Petitioners for discharge must use a printed blank (Form No. 57, General Orders). The blank spaces may be filled by hand or typewriting, but the main body printed.

D. All papers must be so endorsed as to disclose the general contents thereof; and all orders, decrees and rules to show cause submitted to the Court by counsel must be prepared so that when served they will of themselves be self-explanatory.

### RULE XV.

#### Depositories.

When money is deposited in the name of the Clerk, or of a Trustee, it shall not be drawn unless by check signed by said Clerk or Trustee, having on its face the number and title of the cause and countersigned by the Referee in charge. All checks must conform to this rule, and also to the requirements of General Order No. XXIX. The Clerk shall furnish depositories with a copy of said general orders and also a copy of this rule.

### RULE XVI.

#### Compositions and Discharges.

A. The procedure in compositions shall be as follows: The petition shall set forth that the composition proposed has been accepted in writing by a majority in

number and amount of all creditors whose claims have been allowed; that a fund sufficient to pay the consideration proposed, debts having priority, and the costs of the proceedings, has been deposited subject to the Judge's order. Thereupon a rule will issue upon the creditors to show cause why the proposed composition should not be confirmed. Objecting creditors shall enter an appearance thereto on the return day and file specifications of their objection within ten days thereafter.

B. The petition for discharge shall be accompanied by a certificate by the Referee that the petitioner has been examined by his creditors, or has submitted himself for examination before the Referee, and also a certified list of the creditors who have proved their claims before the Referee.

C. A petition for confirmation of a composition shall be accompanied by a certificate of the Referee that the petitioner has been examined by his creditors or has submitted himself for such examination; a list, certified by the Referee, of all creditors who have proved their claims; a schedule showing the names and addresses of the creditors to whom distribution of the composition fund is made, the amount of their claims and the sum to be paid each under the terms of the composition. The Referee may require the said schedule to be prepared by the bankrupt or his attorney.

#### **RULE XVII.**

##### **Triplicate Schedules.**

In involuntary cases, the schedule filed by the bankrupt or by petitioning creditors, shall be triplicate—one copy for the Clerk, one for the Referee and one for the Trustee—as in voluntary cases.

#### **RULE XVIII.**

##### **Fees: When Paid Officers.**

The Trustee's fee of five dollars, deposited with the Clerk, shall be paid to the Trustee on the certificate of the Referee that the case has been closed. He shall be paid such commissions as may be allowed by the Referee, under section 48 of the Act, upon the order of the Referee at the time the dividend is made. The Referee shall be paid his commission at the same time.

In every case where an adjudication has been made, the Clerk shall be entitled to receive the filing fee of ten dollars. The Clerk shall pay to the Referee the ten dollars deposited as fees of the Referee upon receiving the latter's certificate that the case has been closed. Where there are no assets the case shall be deemed closed for the purpose of the payment of said fees to the Referee and Trustee when a discharge has been granted or refused to the bankrupt. If no application for a discharge has been made the case shall be deemed closed at the expiration of two months from the date of the adjudication. In cases where there are assets the case shall be deemed closed upon the confirmation of a composition or payment of the final dividend.

#### **RULE XIX.**

##### **Petition in Forma Pauperis.**

In case a petition is filed by a proposed voluntary bankrupt, accompanied by the affidavit prescribed in section 51, subdivision 2, of the Act, it shall be the duty of the Clerk to file said petition without the payment of the fees provided for by law. Petitioners who have made no deposit with the Clerk should be examined by him, or by the Referee, on their appearance before him, as to their ability to pay. If the Clerk, or Referee, is not satisfied of the petitioner's inability to make the deposit, a report thereof should be made to the Judge, and such report shall be sufficient proof upon which to base proceedings under subdivision 4, General Order No. XXXV.

## RULE XX.

## Fees and Expenses.

There shall be allowed as part of the expenses the following sums:

1. Amounts paid for advertisements (vouchers annexed).
2. For all clerical aid in preparing advertisement and notices to creditors of first meeting, mailing the same and proof thereof, keeping register, files and records, and preparing typewritten memoranda of proceedings prior to the first meeting of creditors, including stationery, envelopes, printing, letters, messages, and all petty expenses — \$5.

(In the monthly account this item may be called clerical aid, etc., prior to first meeting.)

3. For similar clerical aid, etc., on notices of application for discharge or confirmation of composition — \$5.

4. For similar clerical aid, etc., on notices of each and any other meeting of creditors — \$2.

5. If notices to creditors exceed 20 in number, in any of above cases, 10 cents in addition to the above for each notice in excess of 20 (the number of creditors to be stated).

6. For use of office and for clerical aid in taking and keeping notes and records of proceedings at first meeting of creditors up to choice or appointment and qualification of Trustee (any adjournments at creditors' request to be paid for by them at the same rate) — \$2.50.

7. For second, third or final meeting of creditors, the same as above — \$2.50.

8. For clerical aid in taking and perpetuating testimony on the examination of the bankrupt or other persons before the Referee (where the parties do not agree with the Referee's approval in taking such examination themselves), 10 cents per folio, whether taken in long hand or transcribed from stenographer's notes, to be paid by the party examining the bankrupt or witness; for any copy of testimony, 10 cents per folio, to be paid by the party ordering the same.

9. For copies of orders, or other papers, 50 cents; if exceeding one page, 25 cents additional for each page, to be paid by the party ordering.

10. Clerical aid in receiving, endorsing, filing, recording and preserving proofs of claims, to be paid by each creditor on the allowance of claim, 50 cents.

11. A deposit of \$5 with the Clerk at the time of filing the petition, and of \$15 with the Referee at the time of appearance before him, to meet the foregoing expenses fixed by this rule, shall be required in all cases, the same to be refunded out of the assets of the estate.

## RULE XXI.

## Special Order of Judges.

In matters not specially provided for by the Bankruptcy Act of 1898, the general orders, or these rules, the practice of the District Court shall be subject to the special order of the District Judge, which order shall be followed, even though it may conflict with these rules.



**REFEREE'S RULES IN BANKRUPTCY.**

**In the Allegheny County District, Western District of Pennsylvania.**

In addition to the general orders and rules of the District Court, the following rules are hereby adopted and prescribed for the regulation of proceedings in bankruptcy in Allegheny County District of Western District of Pennsylvania, pursuant to Rule 1 of the District Court. These rules shall yield to any special order hereafter prescribed.

WILLIAM R. BLAIR,

*Referee in Bankruptcy for Allegheny County District.*

**RULE I.**

**Time and Place of Proceedings.**

Unless otherwise ordered, all proceedings in bankruptcy shall be held at the office of the Referee, Room 25, St. Nicholas Building, 450 Fourth avenue, Pittsburgh, Pennsylvania. Tuesday and Friday from 10 a. m. to 12 m. in each week shall be the regular days for motions and hearings where no testimony is to be taken. No motions or arguments will be heard on any other day except for special reasons. At all other times than Tuesday and Friday mornings, the regular order of business of the Court before the Referee, shall be, meetings of creditors and hearings for the purpose of taking testimony, as may be fixed by special order of the Referee.

**RULE II.**

**Files and Records.**

The office of the Referee shall be open for the filing of papers, and the files and records must be open for public inspection on all days, not holidays or half holidays, between the hours of 10 a. m. and 3 p. m. No paper or record shall be taken from the office of the Referee for any purpose whatever, except on a written order of the Referee, and in that event such order shall be left in place of the paper or record so taken as a voucher therefor.

**RULE III.**

**Appearances.**

Appearances shall be entered by filing with the Referee a written praecipe stating the name and residence of the party for whom appearance is entered, and the amount of claim if for a creditor. If the appearance is special, the special purpose shall be set forth fully in the praecipe. No appearance for a creditor other than special shall be entered or noted, until the proof of debt of such creditor shall have been filed for allowance. An appearance by any person other than by a party in person, or by an attorney-at-law of the District Court of the United States for the Western District of Pennsylvania shall be accompanied by a letter of attorney substantially in the form No. 20 attached to the general orders which shall be filed with the praecipe. Any attorney-at-law of the Court may be required by the Referee to file a letter of attorney authorizing his appearance, and the Referee may refuse to allow an attorney who is unable to produce written evidence of his authority to participate in further proceedings in the case until such written evidence is filed.

**RULE IV.**

**Preparation of Papers.**

All bonds, orders, dividend sheets, reports, returns and other papers shall be prepared by the attorney for the estate or bankrupt appearing in person. All such papers shall be written, typewritten or printed on white paper of the size of legal cap, and shall be endorsed as provided in Rule 12 for the District Court in Bankruptcy.



# **RULE V.**

## **Notices.**

All notices of petitions for interlocutory orders shall be given by the petitioner unless otherwise specially ordered by the Referee.

# **RULE VI.**

## **Practice on Amendments; Bringing in New Parties, etc.**

Section 1. Prior to the time set for, or before the transaction of any other business at the first meeting of creditors, a petition and schedules or other papers may be amended and new parties brought in, as of course and without notice, unless otherwise ordered. Except as hereinbefore in this rule provided, at or before the first meeting of creditors, a petition and schedules or other papers shall not be amended in any material matter, except on an application, made either at a stated meeting or hearing (or upon motion) and cause shown, after due notice to the adverse party or the creditor or other party in interest to be affected thereby. In case the amendment will add a party to the proceeding, such party shall be entitled to notice of the motion, and any meeting already noticed may be adjourned for that purpose. If publication is begun or is completed when the motion for the amendment adding other parties is made, further publication as to such other parties may be dispensed with.

Section 2. All applications for amendments shall be made by a verified petition addressed to the Referee, and the amendments desired shall be set out in separate schedules or paragraphs, and in such way as to bring them clearly to the attention of the Referee. Similar schedules or paragraphs shall also be incorporated in any order granting amendments. Copies of orders which amend a petition and schedules, duly certified by the Referee, shall be forthwith filed with the Clerk, and, if then appointed, with the Trustee.

# **RULE VII.**

## **Creditors' Meeting.**

The order of business at all creditors' meetings, unless a special order is made to the contrary, shall be as follows: (1) Consideration of proofs of debt; (2) Choice and appointment of trustees; (3) Examination of the bankrupt on oath; (4) Special motions. Only creditors whose claims have been allowed or attorneys authorized to represent such creditors may take part in the choice of the Trustee.

# **RULE VIII.**

## **Filing and Allowance of Proofs of Debt.**

Section 1. Proofs of debt filed for allowance must conform to section 57 of the Act, and to General Order XXI. Claims which are not properly proven will be marked suspended, and will not be taken up again except on special request or motion. The Referee will not notify creditors of the allowance, disallowance or suspension of claims except in answer to verbal or written requests. Claims which are objected to or contested will be considered and allowed or disallowed as soon as possible after the objection or contest is noted. Such objection or the ground of such contest, must, if required by the Referee, be reduced to writing, verified and filed. Testimony on contested claims may be heard at any time if the adverse parties are present or represented, provided such hearing shall not interfere with the regular order of the day, and such adverse party is present or represented, otherwise only on notice to the Trustee, or, if he is the moving party, on notice to the claimant or his attorney.

Section 2. Claims upon which a judgment has been recovered shall be proved as secured claims; if the claimant so desire he may add to the proof in such cases a

waiver and release of any lien or security resulting from such judgment, and in case of such waiver and release the claim may be allowed by the Referee as an unsecured claim.

Section 3. In cases where a claimant has several claims of the same class, as for instance, several promissory notes or promissory notes and a book account, the claims shall be embodied in one proof of debt, and in such cases a brief itemized statement of the claim shall be contained in or attached to the proof of debt; but claims of different classes, as for instance secured claims and unsecured claims, shall not be contained in the same proof of debt.

## RULE IX.

### Examination of Bankrupt.

Section 1. The bankrupt shall attend on the day set for the first meeting of his creditors, and on the day set for the final meeting of creditors. He may be briefly examined in the regular order on the call of the case, but if such examination will last more than fifteen minutes, or if other witnesses are to be called, the meeting shall be continued to some other day and hour, to be fixed by the Referee.

Section 2. In case the creditors do not desire to examine the bankrupt at the first meeting or at the adjournment thereof, an order for examination will be granted by the Referee on motion by the Trustee or any Trustee or any creditor whose claim has been allowed. Notice of such examination shall be given as required by section 58, of the Act of July 1, 1898, by the Trustee or creditor obtaining such order and proof of such notice shall be filed with the Referee at or prior to the time fixed for said examination. After an examination ordered and held as aforesaid, another examination of the bankrupt will not be ordered, except upon cause shown.

## RULE X.

### Perpetuation of Testimony.

Section 1. The examination of the bankrupt and of any witnesses at meetings of creditors or otherwise and all testimony offered on contested claims, or for any other purpose, will be taken down by the official stenographer in the form of question and answer and transcribed, signed and filed of record with the Referee. The expense of thus perpetuating testimony will be at the rate of ten cents (10c) a folio for both copies and shall be paid as follows: Where there are no assets for one reasonable examination in one day, by the bankrupt, and thereafter by the creditor or party in interest for whose benefit or at whose request such examination or testimony is had or taken; where there are assets, as may be ordered by the Referee in each particular case.

Section 2. After the testimony has been transcribed, the attorney calling the witness examined, shall notify said witness to appear before the Referee, that such testimony may be signed as provided in General Order XXII.

## RULE XI.

### Duties of Appraisers.

Appraisers shall within ten days after their appointment, unless such time be extended by the Referee, file their report substantially in the form known as Form No. 13, and they shall also include in the report a schedule of the property claimed as exempt by the bankrupt, with the value of each item or article thereof.

RULE XII.

Miscellaneous Provisions as to Trustees.

Section 1. Trustees' bonds shall conform to Form No. 25, but such bonds shall be properly entitled in the proceeding; the principal, and sureties thereon, shall duly acknowledge the execution thereof, and the sureties shall justify in the penal sum of the bond by making and filing with the bond an affidavit substantially as follows:  
Western District of Pennsylvania, County of Allegheny, ss.:

..... of .....  
being duly sworn, says that he is one of the sureties to the annexed bond, that he is a resident of.....  
.....  
and that he is worth the sum of.....  
over and above all his debts and exemptions and liabilities, which he owes or has incurred, and exclusive of property exempt by law from levy and sale under execution.  
.....

Subscribed and sworn to before me this.....  
day of....., 19.....  
.....  
.....

Section 2. The Trustee shall attend all examination of the bankrupt held after he shall qualify, and all meetings of creditors, and it shall be the duty of the attorney of the estate to notify him of such examinations and meetings.

Section 3. It shall be the duty of the Trustee in cases which show no assets, and where no examination of the bankrupt has been asked, to carefully examine the bankrupt as to his acts and property, and to report any pertinent facts which may appear on such examination.

Section 4. If the Trustee is satisfied that there are no assets that can come into his hands for administration, he shall forthwith report no assets; and ask for his discharge. If in a case claimed to show no assets, he shall be in doubt, or if he shall be of the opinion that there are assets in such an estate, he shall forthwith report the facts by petition, asking for instructions.

Section 5. If the Trustee is satisfied that there are assets in the estate which have no value or the assumption of which would prove a burden to the estate, it shall be his duty forthwith to report the facts by petition asking for instructions.

Section 6. It shall be the duty of the Trustee of an estate which shows assets to examine all claims filed at least once in every thirty days and if the same are found improperly proved or in any way so deficient as to prevent their allowance if not contested, to notify the creditors filing such claims of such deficiencies and ask that the same be proved as provided in section 57 of the Act and General Order XXI, at a time to be fixed by the Referee.

Section 7. All reports and returns made by the Trustee shall be verified.

RULE XIII.

Setting off Exemptions.

Section 1. Where there is no Trustee appointed, the exemptions claimed by the bankrupt may be set off to him at the time the order to that effect is signed, and, in that event, the following clause shall be inserted in Form No. 27:

"And it appearing that the said bankrupt is entitled to the exemptions claimed in the schedules accompanying the petition herein, it is further ordered that the property claimed in said schedules, being exempt pursuant to Act of Assembly of the

Commonwealth of Pennsylvania (approved April 9, 1849, P. L. 533), and its supplements be, and the same hereby is, set off to the said....., the bankrupt."

Prior to asking for such order, the bankrupt shall satisfy the Referee, by affidavit or otherwise, as to the value of such exemptions, and that he is entitled to the same.

Section 2. Reports of trustees of articles set apart by them as exempt to the bankrupt's, shall at the time they are filed be confirmed *nisi* by the Referee, and said confirmation shall become absolute in twenty days without further order, unless exception be in the meantime filed thereto, in accordance with the General Order XVII.

#### RULE XIV.

##### Hearings on Special Reference.

On receipt of a special order of reference the Referee will, on motion of any party interested, fix a day on which the parties shall appear before him and proceed with the reference; notice thereof, as directed by the Referee, shall be given to the adverse parties by the party at whose instance the time is fixed. If testimony is taken upon said reference, it shall be taken, transcribed, and paid for, in the same manner, and at the same rate by the moving party as is prescribed in Rule 10 of these rules.

[Rules for Western District of Pennsylvania and Referee's Rules in Allegheny county are taken by permission from "Campbell's Federal Rules".]



## DISTRICT OF MARYLAND.

### RULE I.

#### Forms of Pleadings, etc.

All pleadings, petitions, proofs of claims and orders filed in bankruptcy proceedings shall be typewritten, printed or legibly written without blots, interlineations or erasures, materially defacing the same, on white paper, legal cap size, approximately thirteen inches long by eight inches wide.

All papers should be properly folded and endorsed outside with: (1) Number of case; (2) title of court; (3) title of case; (4) character of paper; (5) name and address of attorney presenting the same.

Petitions for adjudication shall state the first name of the debtor in full, where he has resided, including the street and number, if any, and also where his principal place of business, if any, has been during the preceding six months, or the greater part thereof; and the schedules, as respects creditors in cities of 50,000 inhabitants or more, should state the street and number of their last known residence or place of business, if known; if not known, that fact must be stated.

Full sets of schedule blanks must be filed. Each question contained in said blanks must be answered separately. If there are no items applicable to any particular blank, such fact should be stated in said blank. Each schedule sheet must be signed by the petitioner or petitioners.

If the schedules do not comply with the above rule, they may be ordered to be corrected by the Referee to whom the case is referred, before further proceedings are allowed in the case.

All amended or additional schedules shall be filed in triplicate, duly signed and sworn to, as required for the originals.

### RULE II.

#### Costs Which Referee May Require to Be Paid in Advance.

The Referee shall be entitled to collect, in advance of services to be rendered, costs and expenditures in accordance with the following schedule:

- |   |        |
|---|--------|
| 1. Amounts required to be paid for advertising.   |        |
| 2. For each set of notices (not exceeding 20) .....   | \$3 00 |
| For each notice above 20 .....  | 15     |
| 3. For clerical aid in preparing advertisement, of first meeting, keeping register, files, and records including stationery, envelopes, printing, messages and all petty expenses .....       | 4 00   |
| 4. For certifying question to Judge for review with necessary record .....  | 3 00   |
| 5. For each day necessarily spent (provided it is by order of court or upon request of creditors) by Referee out of the county of his residence for first or other meeting of creditors ..... | 5 00   |
| 6. For copies of orders or other papers, 50 cents each; if exceeding one page 25 cents additional for each page, to be paid by the party ordering.  |        |

### RULE III.

#### Appointment of Appraisers.

Pursuant to section 38, sub-section 4 of the Act of Congress entitled "An act to establish a Uniform System of Bankruptcy throughout the United States," approved



July 1, 1898, the court does hereby prescribe that in addition to the other duties of the Referees in Bankruptcy, of this court under said Act, they shall appoint appraisers to appraise the real and personal property belonging to bankrupt estates, as required by section 70, sub-section B of said Act, and fix their compensation.

#### RULE IV.

##### Ratification of Sales.

At least ten days' notice, by mail, shall be given by the Referee to all creditors of the bankrupt, of all proposed public sales of real estate. Upon the report of any sale, public or private, of real estate, made by any Trustee or Receiver in Bankruptcy, an order will be passed by the court, ratifying said sale, on some certain day named in the order, not less than fifteen days after the date thereof; and unless otherwise specially ordered by the court, upon cause therefor being shown, at least ten days' notice of said order *nisi* shall be mailed to all creditors by the Referee; and if no exceptions be filed or cause exist for setting aside the said sale, the same will, at any time after the day so named, be absolutely ratified and confirmed.

With the consent of all the parties interested therein, or in exceptional cases which appear to the court to require it, a special order may be obtained for the immediate ratification of a particular sale.

It shall be the duty of the Referee, on or before the day named in the order for finally ratifying and confirming said sale, to file in the Clerk's office, a certificate that he has given the notice to creditors of the proposed sale and of the order *nisi*, required by this rule.

#### RULE V.

##### Duties of Referees.

It shall be the duty of Referees to give all notices required by the Act to be given to creditors. Referees shall on all applications for discharge, certify to the court, not later than the day set for the hearing of said application, that they have given the requisite notice to creditors of said hearing, and further, that they know of no reason, if such be the case, why said discharge should not be granted. Should the Referee know of any reason why said discharge should not be granted, he should certify to the court his reasons therefor.

In all cases of sales of real or personal property, where notice to creditors is required to be given, the Referee shall on or before the date fixed for the final ratification of said sale, certify to the court that such notice has been given.

The Referee's certificate of the appointment or election of Trustee or Trustees shall be promptly forwarded to the Clerk, as well as the Trustee's bond, duly approved. All other papers, left with the Referee to be filed, except claims and powers of attorney, shall be sent to the Clerk of this court, to be filed among the papers in the case. And if the court papers are sent by the Clerk to the Referee, for any purpose they shall be returned to the Clerk, as soon as practicable.

All orders for the sale of real and personal property, the appointment of Receivers and approval of Receiver's bonds, and for the allowance of counsel fees, in bankruptcy cases, shall be signed by the Judge of this court, unless otherwise ordered.

#### RULE VI.

##### Examination of Bankrupt.

At all first meetings of creditors, bankrupts must submit to the examination provided in section 7 (par. 9) of the Bankruptcy Act, which examination may be conducted by the creditors or their counsel, or by the Referee sitting in the case; and said examination shall be sufficient in extent to enable the Referee to determine whether the bankrupt has complied with the law in all particulars.

## RULE VII.

## Duties of Trustees and Receivers.

It shall be the duty of every Receiver and Trustee in Bankruptcy whether acting alone or jointly with others, to qualify immediately after his appointment; they shall then use all due diligence in the search for property of every kind whatsoever which belongs to the bankrupt estate vested in them; and having found the same shall take possession thereof in such manner as may be lawful. It shall be the duty of said Receiver or Trustee to ask for the appointment of appraisers without delay, and to aid said appraisers (when appointed) in the performance of their duties by pointing out the property of the bankrupt, and by furnishing to them all proper and useful information relating to said estate, to the end that all the property of every kind belonging to said estate shall be promptly inspected, inventoried, valued and returned by said appraisers to the court.

And before any appraisalment and return shall be filed with the Referee in Bankruptcy, said Receivers or Trustees shall each sign and append to every return a certificate in form following:

The foregoing is a true and perfect inventory of all and singular the estate of every kind of.....bankrupt, except (a)..... which, after due diligence, we (I) (or either of us) have been able to discover. We (I) have taken possession of all said estate except (b)..... and now hold the same; we (I) know of no concealment, nor do we (I) suspect any to exist; and should we (I) find any, we (I) will, by proper proceedings, promptly bring the same to the attention of the court.

The above certificate must be sworn to by the said Receivers or Trustees; and in case three Trustees have been appointed for one estate, by at least two of them; the affidavit to be made before some officer authorized by the practice of this court, to administer oaths, who shall certify thereto.

It is further ordered, that in the event that a proper inventory, appraisalment and return of the property of any bankrupt estate shall not be filed in accordance with the provisions of the law and this rule within thirty days after the appointment of Receivers or Trustees, it shall be the duty of the Referee to whom said case has been referred (unless previously to the expiration of said thirty days the time has been extended for cause by order of court upon petition), to notify said Receivers or Trustees of their neglect; and if said return shall not be filed within ten days thereafter it shall be the duty of said Referee to prepare and lay before the Judges of this court a rule upon said Receivers or Trustees to show cause within five days thereafter why they should not be removed.

It shall be the duty of all Trustees in Bankruptcy to report to the court, in writing, the condition of estates, amounts of money in hand, and such other details as may be required by the court, as provided for by the Act. It shall also be the duty of Receivers appointed in bankruptcy to report in like manner.

And whenever any Receiver or Receivers, Trustee or Trustees of any bankrupt estate, shall neglect to file any report or statement, which it is made his or their duty to file or make by the Act, or by any general or special order in bankruptcy, within three months from the date of their appointment, and within every three months thereafter, it shall be the duty of the Referee to notify said Receivers or Trustees, as the case may be, by mail, that unless said report or statement shall be filed by them in writing and duly sworn to within ten days from the date of said notice, that a rule will be laid upon them requiring them to show cause before the Judge why they should not be removed from office.

## RULE VIII.

Rule VIII rescinded by order of court passed 20th February, 1914.

**RULE IX.**

**Recording of Papers.**

The Clerk shall, in well-bound books, make up and complete a record of all bankruptcy cases where the title to real estate is involved; said record to consist of such papers as may be selected by the Clerk or designated by the attorney for the purchaser or purchasers.

The cost of such recording shall be paid out of the assets of the estate, unless otherwise ordered by the court.

**RULE X.**

**Deposits and Withdrawals of Money by Receivers.**

It shall be the duty of Receivers appointed by this court to deposit all moneys received by them in one of the designated depositories; and no money shall be drawn from the depository unless by check or warrant, signed by such Receiver or Receivers, and countersigned by the Judge of the court or by the Referee to whom the case may have been referred, or who may be designated for that purpose by the Judge, if there has been no adjudication and reference in the case, which check or warrant shall state the date, the sum and the account for which it is drawn.

**RULE XI.**

**Premiums on Bonds.**

Whenever Trustees or Receivers are required to give a bond with security and the same shall be given with a surety company as surety, and shall be approved, then the premiums paid or to be paid for such bond and for the renewals thereof, if reasonable, may be allowed by the Referee as part of the expenses of the administration of the estate, and the amount of such premium paid or to be paid shall be endorsed on the bond before approval by the Referee.

**RULE XII.**

It is ordered by the District Court of the United States for the District of Maryland, this second day of July, 1915, that with the petition for confirmation of a composition the debtor and his attorney shall file an affidavit or affidavits, which shall show each and every amount of money, articles or other consideration paid theretofore, or promised or agreed to be paid then or at any subsequent time, directly or indirectly to any person, as fees or otherwise in the furtherance of, or having any relation whatever to said composition, except the money or consideration specifically set forth in said composition offer to be paid to creditors. If any moneys or other consideration has been or is to be paid, directly or indirectly, in the furtherance of any composition to any Receiver, Trustee, solicitor for a Receiver or Trustee, or solicitor for the petitioning or other creditors, there shall likewise be filed by each of them, to whom such payment has been or is to be made, an affidavit or affidavits, setting forth the amount thereof, and how and when it has been or is to be made, and the purpose thereof. Brief notice of said amount, articles or other consideration, if any, shall be sent to all creditors in the notice of the return of the rule to show cause why said composition should not be confirmed.

# SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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## RULE I.

### Petitions.

Petitions shall state the full name of the debtor, where he has resided, including the street and number, if any, his principal place of business, if any, during the preceding six months, or the greater part thereof. Petitions by one or more of several partners should state, in case a discharge from copartnership debts is desired, whether there are firm assets, and, if there are, the petition should further state whether the firm and any other partners not joining in the petition are solvent or insolvent, and, if insolvent, the place of residence and whereabouts of such other partners, so far as known, or ascertainable, in order that they may be brought in as parties in case they refuse to join in the petition.

## RULE II.

### Schedules.

Schedules shall be filed with the Clerk of the court, and should be prepared upon printed forms and should state the *street and number* of the residence, or place of business, so far as known, of creditors. When a partnership and the individual members thereof are adjudicated bankrupt, separate schedules shall be filed of partnership and individual assets and liabilities.

## RULE III.

### Petitions in Forma Pauperis.

In case a petition is filed by a proposed voluntary bankrupt accompanied by an affidavit under subdivision 2 of section 51 of said Bankruptcy Act, it shall be the duty of the Clerk to file said petition without exacting the payment of the fees provided for by the Bankruptcy Act. The Clerk may request the Referee to examine into the truth of such affidavit, or the Referee may, of his own motion, make such an examination.

If upon examination the Referee finds that the bankrupt is not entitled to be relieved from payment of the filing fees, the Referee shall order him to pay such fees within a specified time. If the bankrupt fails to comply with the Referee's order such fact shall be certified by the Referee to the Judge, for dismissal of the petition, as provided in General Order XXXV (4) in Bankruptcy.

## RULE IV.

### Reference of Cases.

Cases shall be referred to the several Referees in rotation unless otherwise specially ordered by the Judge.

## RULE V.

### Protection of Property Pending Election of Trustee.

Upon an adjudication of bankruptcy the attorney for the bankrupt shall assume responsibility for the care and protection of the assets of the bankrupt until the election of a Trustee, or the appointment of a Receiver, unless otherwise ordered by the court, and any action taken by such attorney for such conservation shall be considered in determining his compensation as attorney for the bankrupt.



**RULE VI.**

**Trial.**

In involuntary cases where an answer is interposed denying insolvency or acts of bankruptcy, the issues may be brought to trial on a day to be set by the Judge upon motion. A jury for such trial shall be procured as provided by law Rule 53.

**RULE VII.**

**Motions.**

Bankruptcy motions shall be placed on the motion calendar of the particular division hearing bankruptcy matters.

**RULE VIII.**

**Publication.**

Notices required to be published by the Bankruptcy Act shall be published once only, unless otherwise ordered.

**RULE IX.**

**Newspapers.**

The following newspapers are designated, in pursuance of section 28 of the Bankruptcy Act, for publication of notices:

The Evening Star.  
The Washington Herald.  
The Washington Post.  
The Washington Times.

**RULE X.**

**Depositories.**

Banking institutions as depositories for moneys of bankrupt estates shall be designated by orders entered for that purpose, and the Clerk shall keep a list of authorized depositories open to the inspection of the public.

**RULE XI.**

**Application for Discharge.**

An application for discharge on behalf of bankrupts shall be filed with the Clerk of the court and shall be forthwith delivered to the Referee before whom the cause is pending.

Upon receiving the application the Referee shall fix a time for hearing and notify creditors and all parties in interest thereof and that if they purpose to oppose such application an appearance must be entered in the Clerk's office on or before the time fixed for such hearing.

Notice of the hearing shall be given by mail at least thirty (30) days prior to the date set therefor to each creditor and party in interest entitled to notice of proceedings, and by publication in one of the newspapers designated by these rules, not later than five (5) days prior to such fixed time.

If no appearance in opposition to the application for a discharge is filed the Referee shall return to the Clerk of the court the application with his certificate showing that due notice of the filing of such application has been sent to creditors and all parties in interest, as herein provided, and further certifying whether the bankrupt has complied with the requirements of the Bankruptcy Act so far as it is known to the Referee.

If an appearance in opposition is filed the Referee shall retain the matter until the expiration of the ten days allowed for the filing of specifications of grounds of



opposition, and at the expiration of that time shall send to the Clerk the application for the discharge.

If an appearance in opposition to the discharge is filed, followed by specifications of the grounds of such opposition, the Judge may fix the time for hearing the issues thus presented, or refer the same to the Referee for hearing and report.

If no opposition to the application for a discharge is filed, or if filed no specifications in support thereof are filed, within the time allowed by law, the application will be for hearing by the Judge without further notice to the parties.

Specifications in opposition to a discharge shall be filed with the Clerk and shall be verified in the same manner as bills in equity by the party making the same. Each ground of opposition shall be numbered and contain a clear and concise statement of the facts, without repetition, relied on as grounds to defeat the discharge.

## RULE XII.

### Composition Before Adjudication.

All orders staying adjudication of bankruptcy for the purpose of composition shall be signed by the Judge. The order staying the adjudication shall refer the cause to a Referee to take such proceedings as are required by law.

Upon an offer of composition being duly made the Referee shall give notice to each creditor of the terms of composition and of the time when such composition will be considered and voted on, by mailing such notice at least three days prior to the time fixed for such purpose.

Upon the acceptance of the composition, as required by law, the consideration and money is necessary to consummate the composition shall be deposited, as directed by the Judge, and thereupon the Referee shall report to the Judge, showing the number of creditors of the bankrupt, the amount of unsecured indebtedness due by said bankrupt, the number of claims proven before him and the number of creditors and the amount of indebtedness represented by those voting for and those who voted against the composition and his recommendations in the matter.

Application for confirmation of the composition shall be filed with the Clerk. The Judge shall fix a time for hearing thereon, of which the Referee shall give notice as required by law.

If the terms of the composition be rejected the Referee shall report such fact to the court so that the cause may be regularly proceeded with.

## RULE XIII.

### Composition After Adjudication.

If the bankrupt desires to offer terms of composition after adjudication he shall file his proposal with the Referee, and thereupon the matter shall be proceeded with as hereinbefore provided.

Upon the confirmation of a composition the Referee shall have and retain jurisdiction of the cause for allowing and disallowing claims and for the making of all necessary orders for carrying out the terms of the composition.

## RULE XIV.

### Powers of Attorney.

Attorneys and other persons representing creditors of the bankrupt shall not be allowed to vote at meetings or to receive dividends unless they are named in a power of attorney executed by the creditors represented by them authorizing them so to do.

**RULE XV.**

**Dismissal of Petition.**

When an application for the dismissal of a voluntary or involuntary petition is filed, as contemplated by section 59 of the Bankruptcy Act, before a reference to the Referee, the Clerk shall refer such application and petition to the Referee to whom said case would have been referred for the purpose of giving notice to creditors. It shall thereupon be the duty of the Referee to require the bankrupt to file within five days a verified list of all the creditors with their respective post-office addresses, unless said list has theretofore been filed. And immediately on receipt of such list, the Referee shall, by notice in writing mailed to all the creditors, as shown by schedules or verified list of creditors on file, notify all creditors of the filing of the petition in bankruptcy and application to dismiss same, and that the same will be dismissed after ten days from that date, unless objection thereto is sooner presented to him.

The Referee shall file a certificate with the Clerk showing that such notice has been given, and the Judge will enter the proper order.

If an application to dismiss a petition, or the proceedings in bankruptcy, is made after reference of the case to the Referee, the same shall be filed with the Referee who shall give ten days' notice thereof by mail to all creditors, and upon the hearing of such application shall make such order with reference to same as shall be proper and authorized by the Bankruptcy Act.

**RULE XVI.**

**Dismissal of Bankruptcy Cases When Not Prosecuted.**

The first meeting of creditors shall be called by the Referee (to whom the proceedings in bankruptcy have been referred) within the time specified under section 55 of the Bankruptcy Act, and should the bankrupt, after notice from the Referee, as provided by General Order X in Bankruptcy fail to advance or have advanced, the costs necessary for calling such meeting within the time aforesaid, the Referee shall certify such facts to the Judge for the dismissal of the proceedings in bankruptcy for failure to prosecute.

**RULE XVII.**

**Auctioneers.**

Auctioneers desiring to be designated to make sales of the assets of bankrupt estates shall make application to the Judge, setting forth their facilities for handling business of that character. Upon the Judge's approval of such application an order will be passed placing the name of the applicant in the list from which auctioneers may be selected.

An auctioneer upon being so designated, and before acting as such, shall file with the Clerk of the court a bond to the United States, in the penal sum of \$10,000, with surety or sureties to be approved by the Judge, conditioned that such auctioneer will account for and pay over to the person or persons entitled to the same all moneys coming into his hands by reason of his employment.

The fees and compensation to be paid auctioneers for their services in arranging the property for and conducting sales shall not exceed five (5) per centum of the gross amount for which such property is sold.

Any person entitled to a vote at a meeting of creditors may, where an auctioneer is to be employed, require that sealed bids be submitted by auctioneers bonded under this rule, and Referees are directed to appoint the auctioneer submitting the lowest bid.

## RULE XVIII.

## Sales of Real Estate.

All petitions for the sale of real estate shall be filed with the Referee who shall thereupon call a meeting of creditors to consider the same and the Referee shall report to the Judge the action of the creditors at said meeting. All sales shall be reported to and ratified by the Judge.

## RULE XIX.

## Receivers' Reports and Accounts.

Immediately upon the appointment and qualification of a Trustee the Receiver shall turn over to said Trustee all the money and property in the Receiver's possession, taking the Trustee's receipt therefor. Receivers are required to file their reports and accounts within ten (10) days after the election of the Trustee, unless such time be extended by the Judge upon proper application and showing. The Referees are directed to enforce this rule.

If no exceptions to such reports and accounts are filed within ten (10) days after the filing of said reports and accounts, such accounts shall be approved, and the receivers discharged by the Judge.

## RULE XX.

## Bank Deposits of Receivers and Trustees.

Receivers and Trustees shall deposit all moneys coming into their possession in one of the designated depositories as Receivers or Trustees of the particular bankrupt estate as follows:

"..... Receiver or Trustee

(Name of Receiver or Trustee.)

of ..... Bankruptcy No. ...."

(Name of Bankrupt)

## RULE XXI.

## Warrants and Checks.

The Referee before whom a case is pending is designated as the one to countersign all warrants and checks for the withdrawal of money from the depository under Rule 29 of the General Orders, unless otherwise specially ordered by the Judge.

Dividend checks and receipts shall be in the following form:

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

Holding a Bankruptcy Court.

In the matter of

..... } In Bankruptcy No. ....

*Bankrupt.*

\$.....

No. ....

Washington, D. C. .... 19...

The..... National Bank.

Pay to the order of ..... or ..... as attorney for .....  
(Creditor) (Creditor)

the sum of.....dollars, being a dividend of..... per cent (.....%)  
on ..... claim allowed in the above proceeding.

.....  
*Trustee.*

Countersigned:

.....

*Referee in Bankruptcy.*

RECEIPT.

(Do not detach. If detached this check will not be honored.)

\$..... No. ....  
 ..... 19 ....  
 Received of ..... trustee of ....., a bankrupt,  
 the sum of ..... dollars, being in full of the .....  
 dividend of ..... per cent (.....%) on ..... claim allowed in the  
 proceeding of such bankrupt.

.....  
 (Creditor's signature or signature of attorney as attorney for ..... creditor.)

**RULE XXII.**

**Attorneys.**

Receivers and trustees shall be authorized to employ attorneys only upon an order passed by the Judge designating such attorneys, upon a petition filed setting forth the necessity for such employment.

**RULE XXIII.**

**Trustee's Report of Debts Entitled to Priority of Payment.**

Trustees shall ascertain and report to the Referee, before any dividend is ordered, all debts which it is claimed are entitled to priority of payment.

**RULE XXIV.**

**Filing and Reference of Final Reports and Accounts of Trustees.**

The final reports and accounts of trustees in all cases where there are funds on hand for distribution shall be filed with the Clerk of the court, and an order shall be passed by the Judge appointing the Referee a special master to audit the account of the Trustee and to consider all petitions for fees and allowances. No other reference shall be made to the Referee as a special master except in petitions in reclamation.

**RULE XXV.**

**Fees and Allowances to Receivers, Trustees, and Attorneys.**

Receivers, trustees, attorneys for receivers, trustees, petitioning creditors, and the bankrupt, in presenting their claims for allowances shall file with the Referee a verified itemized statement of every item of service for which they claim compensation, stating fully and particularly the character of the services, the length of time necessarily consumed, and their estimate of its value.

In the notice of the final meeting of creditors (which notice shall be mailed in each and every case) the Referee shall state the amounts of the claims for allowances and that a hearing will be had thereon at such final meeting.

At the final meeting of creditors, all petitions for fees and allowances shall be considered by the Referee as a special master, and he shall at such final meeting announce his findings and recommendations, which shall later be incorporated in his report to the Judge. The final dividend, if any, shall at such meeting be declared subject to the approval of the Judge.

The Trustee shall within five (5) days after the Referee files his report present the same to the Judge for his action, after giving at least two (2) clear days' notice of the time at which he intends to present such report to any persons objecting at such final meeting to the findings announced by the Referee.



## 816 RULES IN SUPREME COURT DISTRICT OF COLUMBIA.

The Referee shall state in his report the amount stated by the Trustee as on hand; the total amount of previous dividends, the amount of priority claims, and the amount found to be distributable as a final dividend.

Upon final action by the Judge on the report of the Referee the Referee shall prepare a dividend sheet and deliver the same to the Trustee.

### RULE XXVI.

#### Trustees' Supplemental Reports.

All trustees shall file a supplemental report after distribution is complete, and vouchers signed by the creditors and others shall be filed therewith. Upon the filing of such report with vouchers, if found to be correct, the Referee shall pass an order discharging the Trustee.

### RULE XXVII.

#### Referee's Record Book.

Referees shall keep minutes of all meetings of creditors and other proceedings before them and shall post in their docket all claims filed for allowance, and when such claims are allowed indicate that fact by stamping such claims "allowed." At the close of each case the Referee shall file in the Clerk's office a certificate that the case is closed and his record book, together with all papers filed with him. Such record book shall consist of a flat file record between covers substantially fastened.

When such record book shall be so filed, it shall be the duty of the Clerk to file in a similar form such other papers in the case as have been filed in his office.

### RULE XXVIII.

#### Powers Delegated to Referees.

The referees heretofore or hereafter appointed are hereby respectively vested with the jurisdiction which, by Bankruptcy Law and the general orders of the Supreme Court of the United States, the court or Judge may delegate to or confer upon said referees; and they are respectively empowered and authorized to do all acts, take all proceedings, make all orders and decrees and perform all duties so authorized to be delegated by said act and said general orders without special authority in each case and under the general authority conferred by this order, except:

1. The appointing of receivers, of attorneys for receivers, and of attorneys for trustees.
2. The granting of injunctions.
3. Directing the sale of real estate or perishable property, or the sale of real or personal property free from lien.
4. The settlement of fees and allowances.

### RULE XXIX.

#### Reimbursement for Expenses of Referee.

The Referee shall be entitled to charge the sum of 10 cents for each notice to creditors sent in compliance with law in each case by way of reimbursement for the expenses of office rent, clerk hire, stationery, telephone service, etc., incident to the conduct of his office.

### RULE XXX.

#### Appointment of Appraisers.

In addition to the other duties of referees prescribed by the Bankruptcy Act, they shall appoint appraisers to appraise the real and personal property belonging to the bankrupt estate. In all appraisements, the Referee shall select one auctioneer and two



persons who have had experience, or who are engaged in, the line of business relating to the assets comprising the bankrupt estate. No person connected in any way with the office of a Referee shall be appointed as an appraiser.

**RULE XXXI.**

**Review of Referee's Rulings by Judge.**

When a bankrupt, creditor, trustee or other person shall desire a review by the Judge of any order made by the Referee, he shall file with the Referee his petition therefor within ten (10) days after the date of such order, ruling or decision.

A petition for review shall set forth specifically the error complained of. The Referee shall forthwith certify to the Judge the question presented, a summary of the evidence relating thereto and the findings and order of the Referee thereon. The Referee may accompany such certificate with a statement of his reasons for the order, ruling or decision complained of.

A failure to comply with this rule shall be held a waiver of the right of review, unless on special order thereafter made by the Judge or Referee.

**RULE XXII.**

**Fees of Referee and Trustee.**

The fees deposited with the Clerk for the services of the Referee and Trustee shall be paid by the Clerk on the Referee's report that the case is closed.

**RULE XXXIII.**

**Summons.**

All summons for the attendance of witnesses shall be signed and issued by the Clerk and be served by the marshal of this court.

**RULE XXXIV.**

**Intervening Petition.**

No motion by an intervenor for the appointment of a Receiver on behalf of the intervening creditors, shall be entertained unless one clear day's written notice of the motion has been given to the attorney for the petitioning creditors.

**RULE XXXV.**

**Premium on Bonds.**

Whenever a Trustee or Receiver is required to give bond and the same shall be given with a surety company as surety and shall be approved, then the premium paid or to be paid for such bond, and for the renewal thereof, if reasonable, may be allowed by the Referee as part of the expense of administration of the estate; and the amount of such premium paid or to be paid shall be endorsed on the bond before approval by the Referee.

**RULE XXXVI.**

**Instructions to Referees.**

1. Referees are directed to exercise an active supervision over trustees to prevent delay in the settlement of estates. The provisions of section 47 of the Bankruptcy Act, requiring that trustees make reports every two months, and of section 65, requiring dividends to be paid within thirty days after the adjudication, if there is sufficient money applicable thereto to pay same, and thereafter whenever there is sufficient money to pay a dividend of 10 per cent should be strictly enforced. If any

Trustee, after due notice from the Referee, neglects to make such reports, or to pay such dividends, or unreasonably delays, in any respect, the prompt settlement of the estate, the Referee in charge is directed to make a certificate of the facts and upon it to issue an order, returnable before the Judge on any motion day, requiring the Trustee to show cause why he should not be removed.

2. Referees are directed to make a report to the court in the months of April and October, in each year, of all unsettled cases which have been pending before them more than fifteen months. Such reports shall contain the title and number of the case, the date when it was referred, and a concise statement showing what substantial proceedings have been had in the case, and why it has not been closed.

3. Attention is called to section 38 (5) of the Bankruptcy Act, which provides that stenographers' compensation shall not exceed ten cents per folio for reporting and transcribing the proceedings.

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Creditors, receivers, trustees and attorneys should consult with referees as to the proper forms to be used and as to matters of procedure.

These rules shall be in force on and after April 26, 1915.

#### **Amendments to the Bankruptcy Rules.**

By order of the Supreme Court of the District of Columbia, in general term, promulgated March 15, 1916, the Bankruptcy Rules were amended as follows:

"In place of the existing fourth paragraph of Rule 12, a paragraph shall be inserted thus:

"Application for confirmation of the composition shall be filed with the Clerk. The Judge shall fix a time for a hearing thereon before the Referee as a special master, who shall report his findings and recommendations, together with any objections that may be offered to confirmation, for the consideration of the Judge.

"In place of the existing Rule 24, insert a new rule which reads as follows:

"The final reports and accounts of trustees in all cases where there are funds on hand for distribution and, in special cases of long duration, other accounts, shall be filed with the Clerk of the court, and an order shall be passed by the Judge appointing the Referee a special master to audit the account of the Trustee and to consider all petitions for fees and allowances. No other references shall be made to the Referee as a special master except in composition cases and on petitions in reclamation.

"In Rule 25, insert an additional paragraph to read as follows:

"In any special case of long duration, but not more than one time in any one year, the Trustee in such case may file a report and account with the Clerk and a reference similar to that provided for in Rule 24 may be had. The Referee shall thereupon call a meeting of creditors as set forth in paragraph one hereof, and the procedure with respect to findings, report, exceptions and confirmation shall be the same as herein provided with respect to the final report and account of the Trustee.

"By the Court:

J. HARRY COVINGTON,  
*Chief Justice.*"

## SOUTHERN DISTRICT OF OHIO.

### \*RULE XIV.

#### Petitions.

Petitions should state where the debtor has resided, including the street and number, if any, and also where his principal place of business, if any, has been during the preceding six months, or the greater part thereof, and also the date of any assignment or insolvent proceedings under the laws of a State. The petitioner shall also aggregate the liabilities set forth in his schedule in bankruptcy.

### RULE XV.

#### Payment of Fees.

The Clerk shall pay to the Referee the fifteen dollars deposited as the Referee's fees upon receiving his certificate that the case has been closed and his services have been rendered. The Trustee's fees of five dollars deposited with the Clerk shall be paid to the Trustee upon the certificate of the Referee that the services of the Trustee have been actually rendered and that the case has been closed. Where there are no assets the case shall be deemed closed, for the purpose of payment of said fees to the Referee and Trustee, when a discharge has been granted or refused to the bankrupt. If no application for a discharge has been made the case shall be deemed closed at the expiration of two months from the date of the filing of the report of the Referee. In cases where there are assets the case shall be deemed closed upon the confirmation of the composition or the payment of the final dividend.

### RULE XVI.

#### Newspapers Designated.

The following newspapers are hereby designated in pursuance of section 28 of the Bankruptcy Act:

#### WESTERN DIVISION.

Adams county .....	Adams County Record.....	West Union.
Brown county .....	The Bee .....	Ripley.
Butler county .....	The Republican News .....	Hamilton.
Champaign county .....	The Citizen's Gazette .....	Urbana.
Clark county .....	The Sun .....	Springfield.
Clermont county .....	The Courier .....	Batavia.
Clinton county .....	The Journal .....	Wilmington.
Darke county .....	The Weekly Tribune .....	Greenville.
Greene county .....	The Gazette .....	Xenia.
Hamilton county .....	The Court Index .....	Cincinnati.
Highland county.....	The Herald News .....	Hillsboro.
Lawrence county .....	The Register .....	Ironton.
Miami county .....	The Buckeye .....	Troy.
Montgomery county ....	The Dayton Journal .....	Dayton.
Preble county .....	The Register .....	Eaton.
Scioto county .....	The Blade .....	Portsmouth.
Shelby county .....	The Journal Gazette .....	Sidney.
Warren county .....	The Western Star .....	Lebanon.

[\*Note Rules I-XIII do not refer to bankruptcy proceedings.]

## EASTERN DIVISION.

Athens county .....	The Messenger-Herald .....	Athens.
Belmont county .....	The Belmont Chronicle .....	St. Clairsville.
Coshocton county .....	Coshocton Age .....	Coshocton.
Delaware county .....	The Gazette .....	Delaware.
Fairfield county .....	The Lancaster Gazette .....	Lancaster.
Fayette county .....	Record-Republican .....	Washington C. H.
Franklin county .....	The Ohio State Journal.....	Columbus.
Gallia county .....	The Gallia Times .....	Gallipolis.
Guernsey county .....	The Republican Press .....	Cambridge.
Harrison county .....	The Cadiz Republican .....	Cadiz.
Hocking county .....	The Journal-Gazette .....	Logan.
Jackson county .....	The Sun .....	Jackson.
Jefferson county .....	The Herald-Star .....	Steubenville.
Knox county .....	The Republican News .....	Mt. Vernon.
Licking county .....	The American Tribune .....	Newark.
Logan county .....	Index-Republican .....	Bellefontaine.
Madison county .....	The Enterprise .....	London.
Meigs county .....	The Tribune-Telegraph .....	Pomeroy.
Monroe county .....	Monroe Republican .....	Woodsfield.
Morgan county .....	The Herald .....	McConnellsville.
Morrow county .....	The Sentinel .....	Mt. Gilead.
Muskingum county .....	The Courier .....	Zanesville.
Noble county .....	The Republican Journal .....	Caldwell.
Perry county .....	The Tribune .....	New Lexington.
Pickaway county .....	The Union-Herald .....	Circleville.
Pike county .....	The News .....	Waverly.
Ross county .....	Scioto Gazette .....	Chillicothe.
Union county .....	The Tribune .....	Marysville.
Vinton county .....	The Republican .....	McArthur.
Washington county ....	The Register .....	Marietta.

## RULE XVII.

## Banks Designated.

The following banking institutions are hereby designated as depositories of money of bankrupt estates by Trustees:

## WESTERN DIVISION.

Adams county .....	Adams County Bank.....	West Union.
Brown county .....	Citizens National Bank .....	Ripley.
Butler county .....	First National Bank.....	Hamilton.
Champaign county ....	National Bank of Urbana.....	Urbana.
Clark county .....	Lagonda National Bank.....	Springfield.
Clermont county .....	First National Bank.....	Batavia.
Clinton county .....	First National Bank.....	Wilmington.
Darke county .....	Farmers National Bank.....	Greenville.
Greene county .....	Xenia National Bank.....	Xenia.
Hamilton county .....	The Atlas National Bank.....	Cincinnati.
Highland county .....	Farmers and Traders Bank.....	Hillsboro.
Lawrence county .....	First National Bank.....	Ironton.
Miami county .....	Troy National Bank.....	Troy.
Montgomery county ....	Third National Bank.....	Dayton.



Preble county .....	Preble County National Bank.....	Eaton.
Scioto county .....	Portsmouth National Bank.....	Portsmouth.
Shelby county .....	First National Exchange Bank.....	Sidney.
Warren county .....	Lebanon National Bank.....	Lebanon.

#### EASTERN DIVISION.

Athens county .....	First National Bank.....	Athens.
Belmont county .....	First National Bank.....	St. Clairsville.
Coshocton county .....		
Delaware county .....	Delaware County National Bank.....	Delaware.
Fairfield county .....	Hocking Valley National Bank.....	Lancaster.
Fayette county .....	The Midland National Bank.....	Washington C. H.
Franklin county .....	Clinton National Bank.....	Columbus.
Gallia county .....	First National Bank.....	Gallipolis.
Guernsey county .....	Old National Bank .....	Cambridge.
Harrison county .....	Fourth National Bank.....	Cadiz.
Hocking county .....	First Bank .....	Logan.
Jackson county .....	First National Bank.....	Wellston.
Jefferson county .....	Commercial National Bank.....	Steubenville.
Knox county .....	First National Bank.....	Mt. Vernon.
Licking county .....	Peoples National Bank.....	Newark.
Logan county .....	Peoples National Bank.....	Bellefontaine.
Madison county .....	The Central Bank.....	London.
Meigs county .....	Pomeroy National Bank .....	Pomeroy.
Monroe county .....	First National Bank.....	Woodsfield.
Morgan county .....	Citizens Bank .....	McConnellsville.
Morrow county .....	First National Bank.....	Cardington.
Muskingum county .....	Old Citizens National Bank.....	Zanesville.
Noble county .....	Noble County National Bank.....	Caldwell.
Perry county .....	Perry County Bank Co. ....	New Lexington.
Pickaway county .....	First National Bank.....	Circleville.
Pike county .....	Hayes, Jones & Co.....	Waverly.
Ross county .....	First National Bank.....	Chillicothe.
Union county .....	Peoples Bank .....	Marysville.
Vinton county .....	Vinton County National Bank.....	McArthur.
Washington county ....	First National Bank.....	Marietta.

#### RULE XVIII.

##### Fees in Involuntary Cases.

Fees deposited by the petitioner in an involuntary case shall be returned to him by the Trustee out of the estate of the bankrupt in all cases where property sufficient for such purpose comes into the hands of the Trustee.

#### RULE XIX.

##### In Forma Pauperis.

Petitioners who have made no deposit with the Clerk for services of officers should be examined by or under direction of the Referee, on their appearance before him, as regards their means; and if the Referee is not satisfied of the bankrupt's inability to make the deposit, a report thereof should be made to the Judge.



**RULE XX.****Return and Answer Day.**

In involuntary cases return day shall be within fifteen days, and answer day shall be within ten days thereafter. In involuntary cases the first hearing before the Referee shall be within fifteen days of the reference, at least ten days' notice of such hearing having been given.

**RULE XXI.****Where no Referee or Newspaper.**

In case a petition is filed by or against a bankrupt who resides in any county where there is a vacancy in the office of Referee, or where the Referee is disqualified, absent, sick or otherwise unable to act, reference is made to the Referee who is most conveniently located to the bankrupt's residence. In case a petition is filed by or against a bankrupt who resides in a county where there is no designated newspaper, or where the designated newspaper for any reason refuses to act, the notices required by law may be published in a newspaper named by the parties in interest published in the county where the bankrupt resides or the major part of his property is situated.

**RULE XXII.****Countersigning Checks.**

The Referee before whom a case is pending is designated as the one to countersign all warrants and checks for the withdrawal of money from the depository, under General Order XXIX, unless otherwise specially ordered by Judge.

**RULE XXIII.****Publication.**

Notices of application for discharge as provided for in section 58c of the Bankrupt Act shall be by publication in the designated newspaper in each county, three times in the counties of Clark, Franklin, Hamilton and Montgomery, and twice in each of the other counties of the district, and the first publication shall be not less than ten days before the day fixed for the hearing of such application.

**RULE XXIV.****Bankruptcy Districts.**

Each county in this district shall constitute a separate bankruptcy district in each of which one or more referees may be appointed.

**RULE XXV.****Sessions of Court.**

Court will sit in bankruptcy as follows:

In the Western Division at Cincinnati, on the last Monday of January, February, March, April, May, June, September, October, November and December.

In the Eastern Division, at Columbus, on the second Friday in February, April, June, October and December.

**RULE XXVI.****Referee to Grant Stay.**

When a motion for an injunction is pending or is about to be made, the Referee may, in order to prevent injury to the property of the bankrupt, or otherwise grant a temporary restraining order staying proceedings until the hearing and decision of said motion. In case all parties in interest agree that said motion be heard by the Referee in charge, they may file with the Referee a written stipulation to that effect.

The decision of the Referee on such motion shall be filed with the Clerk, and if the Referee decide that an injunction shall issue, an order to that effect may be made by the Judge.

**RULE XXVII.**

**Hearing on Certificates.**

After a question has been certified by the Referee, pursuant to General Order No. XXVII, and as provided in Form No. 56, the papers may be filed with the Clerk, and the hearing may be brought on before the Judge upon any Bankrupt Court Day, by either party, by giving the usual notice.

**RULE XXVIII.**

**Conditions of Discharge.**

No discharge shall be granted to a bankrupt until the Referee has filed his final report, or a report showing that the bankrupt has to the date of such report complied with the provisions of the Act of Congress and the orders of the Court and the Referee.

**RULE XXIX.**

**When no Trustee Appointed.**

When the bankrupt is entitled to no exemption under the laws of the State, and the assets do not exceed the deposit required to be made by the bankrupt for the services of the officers, and the probable costs of the proceedings, no Trustee shall be appointed by the Referee, or elected by the creditors.

**RULE XXX.**

**Repeal of Former Rules.**

All rules of the United States District Court for the Southern District of Ohio, heretofore made or promulgated, except such as are herein contained, are hereby repealed and declared void.

**RULE XXXI.**

**Adopted August 3, 1911.**

On this day, August 3, 1911, it is ordered, which order shall be in force hereafter, as follows, to-wit:

Unless specially authorized by the court, receivers and trustees in bankruptcy shall not retain as their attorney, the attorney of the bankrupt, of the petitioning creditors, of the person applying for the appointment of a receiver, or of any creditor, and trustees shall not retain as their attorney, any attorney who has obtained proxies or voted upon the election of such trustee, or who is the attorney for persons holding such proxies.

## DISTRICT OF INDIANA.

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### RULE I.

#### Adopted October 3, 1898 — Undertaking for Costs.

All petitions by or against any person or corporation in bankruptcy shall, in addition to the deposit of money required by law, be accompanied by an undertaking with sureties approved by the Clerk, for the payment of such actual and necessary expenses as may be incurred for the publication of notices, travel of the Referee and Trustee, and the blanks, stationery and record books of the Referee in each case, and all such expenses shall be taxed as costs therein.

### RULE II.

#### Adopted October 26, 1898 — Bond of Trustees.

It is ordered that when the creditors of any bankrupt fail to select a trustee of his estate, it shall be the duty of the Referee before whom the proceedings are pending, to select a trustee and require of him to give a bond in a sum not less than the value of such estate as shown in the schedules.

All bonds taken by a Referee shall be accompanied by a justification on the part of the sureties as required by law and a certificate of his approval thereof.

### RULE III.

#### Adopted October 29, 1898 — Amended November 12, 1906 — Depositories.

All banks organized under the laws of the United States and all banks and trust companies organized under the laws of the State of Indiana, in any Referee district, are hereby designated as depositories for the funds in bankruptcy cases pending before the Referee therein, and any one of said banks or trust companies shall be authorized to receive such funds upon filing with the Clerk of this Court a bond in the sum of \$5,000, with sureties approved by said Referee.

Trustees shall report their deposits as they are made in each case to the Referee before whom the same is pending, and their checks against such deposits shall be countersigned by him; and whenever the bankruptcy deposits in any bank or trust company shall equal or approximate the amount of its bond, it shall be the duty of said Referee to require of such bank or trust company an additional bond in an amount large enough to cover any further deposits that may be made therein.

### RULE IV.

#### Adopted March 1, 1899 — Solicitors' Fees.

Ordered by the Court that all petitions for the allowance of solicitors' fees in any bankruptcy case shall be presented to the Referee in charge thereof, and thereupon evidence shall be taken by the Referee concerning the character and value of the services of the petitioner, and such evidence shall be forthwith returned into the Clerk's office with the finding and opinion of the Referee thereon and the recommendation of the Trustee concerning the same; and all allowances by the Court shall be subject to the right of any creditor on the submission of the accounts of the Trustee at a meeting of the creditors to file exceptions thereto.

RULE V.

Adopted April 14, 1899 — Referee's Record.

In all cases where it appears to the satisfaction of a Referee that there are no assets, after exemption of property to the bankrupt and payment of costs, it shall be the duty of the Referee to file his final record with the Clerk on or before the expiration of thirty days from the date of adjudication.

RULE VI.

Adopted October 30, 1900 — Petitions for Review.

All petitions for the review of any order or decision by a Referee shall be filed with him within ten days after the same is made, and be accompanied by an assignment of errors and the brief of the petitioner, and the proceedings shall thereupon be certified by the Referee into the Clerk's office of this Court, as required by General Order No. 27, and Form 56, of the General Orders and Forms in Bankruptcy of the Supreme Court of the United States. And the opposing party shall have ten days after the filing thereof in the Clerk's office within which to file his brief in answer thereto; and upon the expiration of that period of time the case shall be taken as submitted.

All petitions and accompanying assignment of errors and all briefs shall be filed in duplicate, and a failure to file them within the time fixed shall be taken as a waiver of the rights of the parties respectively.

RULE VII.

Adopted February 5, 1901 — Solicitors' Fees.

Every attorney in presenting his claim for legal services in any bankruptcy proceeding to the Referee shall file with him an itemized statement of every item of service for which he asks compensation, stating fully and particularly the character of the service, the length of time necessarily employed, and his estimate of its value under oath; and no claim for such services shall be received unless such itemized claim is presented to the Referee.

On receiving such claim, the Referee shall hear the evidence thereon, reporting to the Court his finding thereon as to the value of such services, and return such finding with all the evidence to the Judge of the Court with all convenient dispatch.



## NORTHERN DISTRICT OF ILLINOIS, E. D.

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It is hereby ordered, that until otherwise ordered by the Court the following temporary rules be and are hereby adopted and prescribed for the regulation of proceedings in bankruptcy in the United States District Court for the Northern District of Illinois:

### **Rule I.—Adopted March 29, 1899.**

All notices required to be given under section 58 of said Act shall be printed on postal cards or on cards to which one cent stamps may, by postal regulations, be attached, and said cards properly stamped and addressed, together with proper blank affidavit of mailing, which shall contain a list of the names of the creditors to whom notices are to be sent and their respective addresses, as appears by the schedule filed by the bankrupt, shall be delivered by the bankrupt or his attorney to the Referee (except the notice of the petition for final discharge and affidavit of mailing thereof, which shall be delivered in like manner to the Clerk of this Court) at least one day before the same are required to be mailed under the provisions of this Act; and the same Referee or Clerk, or some person in their employ, shall mail said notices and execute the proper affidavit thereof. The Referee or Clerk shall direct the form or manner of publication and proof thereof, of the notices mailed by them respectively, and shall sign the original of each notice.

### **Rule II.—Adopted February 8, 1899.**

Where voluntary bankrupts have heretofore omitted to subscribe the several sheets of their schedules attached to their petitions, they are hereby ordered so to do, whether their said petitions are in possession of the Clerk, Referee, or Trustee, without any further order in their respective cases.

### **Rule III.—Adopted March 4, 1899.**

The petition for a discharge must be in the form prescribed by the Supreme Court (No. 57), and shall be filed with the Clerk, who upon the presentation of such petition to him shall enter the order which is part of Form No. 57, and shall set a day for a hearing, not less than ten days after the date of entry of such order. The Clerk shall also attend to the publication and mailing of such order, and certify to the same as provided in Form No. 57, but the Clerk may require the bankrupt or his attorney to prepare all necessary copies and notices in form as directed. The publication as aforesaid shall be made at least one week, and the copies shall be mailed to creditors at least ten days prior to the day named for the hearing on such petition.

There must also be presented to the Clerk at some time before the final discharge is granted a report or certificate of the Referee that the bankrupt has in all things conformed to the requirements of the Act and that so far as the Referee has been able to ascertain, the said bankrupt has committed none of the offenses and done none of the acts prohibited in subdivision (b) of section 14 of the Act, and that such bankrupt is in the opinion of the Referee entitled to his discharge.

If no creditor or other party in interest appears and opposes on or before the day named in the order to show cause, the discharge may be granted. Opposition to the discharge by a creditor or other party in interest shall be made in the manner prescribed in General Order XXXII. The issue thus joined may be referred to the Referee to ascertain and report the facts with his conclusions thereon. Either party may except



to such report, and the exceptions may be heard by the Judge upon one of the days designated by him for such hearings.

**Rule IV.—Adopted March 30, 1899.**

Upon the filing of a petition for a meeting of creditors to consider a composition as per Form 60 prescribed by the Supreme Court, the matter shall be referred by the Clerk to the proper Referee, who shall give the notice therefor as prescribed by Rule I of this Court.

Upon the filing of a petition for confirmation of a composition the Referee shall fix a day within which parties in interest shall show cause in opposition thereto in the manner provided in General Rule XXXII, of the Supreme Court, and shall mail notices thereof to the creditors in accordance with Rule I of this Court, which notices shall be mailed at least ten days before the said date fixed by the Referee. If no creditor or other party in interest shall appear in opposition to the confirmation of such composition within the time so fixed, as provided in said Rule XXXII, and the bankrupt shall file the written approval of the Referee of the composition, the same may be confirmed by the Court, but if opposition is made to such confirmation, the issues shall be by the Clerk referred to the Referee to ascertain and report the facts, together with his conclusions thereon. Either party may except to such report, and the exceptions may be heard by the Judge upon one of the days designated by him for such hearings.

**Rule V.—Adopted April 26, 1899.**

The petitioner or petitioners in all cases in bankruptcy shall, at the time of filing their respective petitions, deposit with the Clerk the sum of five dollars (\$5) to indemnify the Referee for his necessary incidental expenses, including office rent, clerical aid, stationery, etc., and out of which sum the Referee may be reimbursed for such expense. The sum so advanced by the bankrupt or other person, may be repaid him out of the assets of the estate, if any, as costs of administration.

Where expenses shall be incurred by the Referee in excess of said deposit of five dollars, in any particular case, a special order with reference to the same may be made by the Judge on application of the Referee.

The Referee shall keep an account as against said fund, showing the items of disbursements and incidental expenses incurred in each case.

**Rule VI.—Adopted May 15, 1899.**

In all cases in this district, wherever funds are to be distributed by the Clerk, Trustee or Referee, the same shall be by check payable to the order of the creditor in whose name the account is proved, or to the attorney in fact of such creditor or to the assignee of such account (provided the power of attorney or assignment is filed with the Referee); but such check may be delivered to the attorney of record in this Court of such creditor or assignee. And in all cases which have been referred to a Referee, all checks shall be signed by the Clerk or proper Trustee and also by the Referee to whom the cause has been referred, before they are issued; and whenever the statute or general rules provide for the deposit of funds and the checking out thereof under the direction of the Judge of this Court, it shall be proper to have same deposited in the name of the Clerk, and checks against said fund shall be signed by the Clerk and also by the proper Referee before they are issued, except on special cause shown in a particular case.

**Rule VII.—Adopted October 24, 1899.**

All specifications of objections to discharge of bankrupts when duly filed, will be referred by the Clerk to the proper Referee to take testimony and report the same together with his conclusions thereon to the Court.

**Rule VIII.—Adopted January 5, 1900.**

The referees in bankruptcy appointed by this Court are hereby designated and authorized to countersign checks drawn on funds in the depositories of this Court, in the cases assigned to them respectively, whenever such checks are required by the terms of Supreme Court Rule XXIX to be countersigned by a Judge or Referee.

**Rule IX.—Adopted July 24, 1905.****Receivers.**

Upon every application for a receiver in bankruptcy, notice thereof shall be first given to the bankrupt unless it be made to appear to the Court, by the petition or affidavit showing the facts, that the service of such notice is impracticable.

The Receiver, upon his appointment and qualification, shall proceed without delay, to make an inventory of the property coming to his possession, and shall file the same immediately upon its completion, with the Clerk of this Court.

The Receiver shall not employ an attorney or counsel without having obtained leave of Court therefor, upon written application, setting forth the facts showing the necessity for such employment, and no attorney or counsel for such Receiver shall be allowed compensation out of the estate for services other than for such as are reasonably necessary, and of a strictly legal character.

No sale of property shall be made by a Receiver unless he present to the Court his verified petition setting forth the necessity therefor, and also make it appear to the satisfaction of the Court, that the estate will suffer loss unless such sale be made before the election of the Trustee. In no case shall a sale be made without notice to creditors as provided in section 58-a, nor shall a sale be made before adjudication without the bankrupt's consent, except as provided for in section 2 (5) and General Order in Bankruptcy XVIII.

All moneys belonging to a bankrupt estate, coming into a Receiver's hands, shall be by him immediately deposited in one of the designated depositories, and the same shall not be withdrawn except on checks signed by the Receiver and countersigned by the Clerk of this Court, upon the order of the Judge (unless otherwise provided where the Receiver is conducting the business under orders of the Court), provided checks may be drawn and signed, as aforesaid, to cover small incidental expenses in advance if the Judge so orders.

Immediately upon the appointment and qualification of a Trustee, the Receiver shall turn over to such Trustee all the money and property in the Receiver's possession, taking the Trustee's receipt therefor, and the Receiver shall file his final report and account within five days after the qualification of the Trustee unless such time be extended by order of the Judge.

Receivers shall receive for their services, payable after they are rendered, out of the first moneys coming to the hands of the Trustee, such compensation as the Court may allow, provided that the maximum allowance to the Receiver shall not exceed the maximum to be allowed trustees for their services under section 48 (a) of the Bankruptcy Act as amended February 5, 1903, for moneys disbursed by them, and provided, also, that where tangible property other than money is turned over to a Trustee by the Receiver, such Receiver's maximum compensation shall be based upon the fair value of such property in addition to the aggregate of the money actually disbursed and turned over to the Trustee, or the Receiver's fees be held in abeyance until the Trustee reduces the property to money. See opinion of Judge Lowell, In re Cambridge Lumber Co., 136 Fed. Rep. 983.

**Rule X.—Adopted July 24, 1905.****Petitioning Creditors.**

It shall be the duty of the petitioning creditors, through their attorneys, to procure the adjudication of the bankrupt, as speedily as the law permits. The attention of

petitioning creditors and their attorneys is especially directed to General Order in Bankruptcy IX.

**Rule XI.—Adopted July 24, 1905.**

**Petition to Dismiss Proceedings.**

Every application to dismiss a voluntary or involuntary petition in bankruptcy, as contemplated by section 59g of the Bankruptcy Act, must be by petition in writing, signed by such applicant or his attorney of record in the case, and if made in an involuntary case before the schedules provided for in section 7 of the Act have been filed, such application must be accompanied by a list of all the known creditors of the bankrupt, which list must either have been sworn to by the bankrupt, or by one of the petitioning creditors or his attorney in the case. Upon the filing of such petition to dismiss, an order will be entered of record in the case, fixing a day more than ten days after the filing of the application, upon which creditors and all parties in interest may show cause before the Judge, if any there be, in opposition to such petition to dismiss, which order shall also provide for notice to be given in accordance with section 58a (8) of the Bankruptcy Act. If such application to dismiss is presented before adjudication and reference, the notice aforesaid may be given by the Clerk; if filed after the adjudication and reference, the notice shall be given by the Referee to whom the case stands generally referred, and in such case, a certified copy of the order to show cause shall at once be furnished the Referee. The certificate of the Clerk or Referee, as the case may be, showing that the aforesaid notice has been duly given, shall be filed in the Clerk's office on or before the day fixed in the order to show cause.

**REFEREES' RULES CONCERNING PETITIONS IN BANKRUPTCY.**

The following rules governing the preparation of petitions and schedules in bankruptcy, and amendments thereto, are hereby adopted by the referees for the counties of Cook, Lake and McHenry in said district:

1. Petitions in voluntary cases and schedules in all cases must be in the printed form prescribed by the United States Supreme Court, and the information therein required must be set out in full under the appropriate headings, without erasure or interlineation. In Schedule A, the data called for by each heading must be placed in the column directly below such heading and must be confined within the vertical lines enclosing that column. The columns must be so ruled as to provide a reasonable space for inserting the appropriate matter, and in order to comply with this rule as to Schedules A and B (1) it will be necessary to use forms with the printed matter running lengthwise of the legal cap page so that the requisite space may be afforded.

2. The post office address of the bankrupt, as well as that of his lawyer, if any, shall be endorsed on the wrapper of the petition.

3. The address of each creditor must contain the street number, city, and that fact shall be stated.

4. The use of ditto marks is forbidden by Supreme Court General Order V. (In re Orne, Fed. Cas. 10582.)

5. Claims for exemption must be itemized with amount of the bankrupt's valuation against each item, and the total stated. The appropriate allegation must be made if the bankrupt claims the exemption as the head of a family.

6. Oaths to the petition and schedules must not be administered by the attorney \* of the affiant.



# **EASTERN DISTRICT OF MISSOURI.**

**Adopted February 1, 1913.**

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## **RULE I.**

All notices and orders required by law to be published in a newspaper published in any county within the Eastern District of Missouri, outside of the City of St. Louis, shall be inserted in such newspaper published in such county as shall be designated by the Referee acting in the case wherein such publication is required.

## **RULE II.**

Notice of the first meeting of creditors shall be published once, unless otherwise ordered by the Court or Referee, and such publication shall be made at least one week prior to the day fixed for such meeting.

## **RULE III.**

The Referee is authorized to designate depositories for the money of bankrupt estates, fix the amount of the bond required from such depositories and approve the same, as required by section 61 of said Act.

## **RULE IV.**

The Referee shall have authority to cause the first meeting of creditors to be held and fix the time and place for holding the same; direct the bankrupt by order to attend the first meeting of creditors, and enforce such order, as in the case of a witness subpoenaed to attend before the Referee; appoint a Trustee or Trustees for each bankrupt estate when the creditors fail to do so; fix the amount of the bond or bonds of such Trustee or Trustees, as required by law, and properly record the order of approval; appoint appraisers of the real and personal estate of the bankrupt in conformity to law; determine all controversies touching the claim of the bankrupt to exemptions; authorize the Trustee or Trustees to institute suits to recover property, debts and choses in action belonging to the estate of the bankrupt, and to continue the prosecution of suits begun by the bankrupt prior to the adjudication of bankruptcy; allow claims, disallow claims, reconsider allowed or disallowed claims, and allow them or disallow them against the estate of the bankrupt, subject to review by the Court on exceptions filed within ten days; and shall have and exercise all powers and jurisdiction vested by law in the Court in respect of the duties, acts and proceedings aforesaid.

## **RULE V.**

When the Judge is absent from a Division of the District, and a certificate stating that fact, signed by the Clerk of the Court, shall be delivered to the Referee therein. the Referee is authorized and empowered to appoint receivers, or the Marshal, upon application of parties in interest, in case the Referee shall find it absolutely necessary for the preservation of the estate, to take charge of the property of the bankrupt after the filing of the petition and prior to its being dismissed or the Trustee being appointed. and to exercise such jurisdiction over the acts and proceedings of the Receiver or Marshal in respect to their acts and proceedings, as the Court may by law exercise.

**RULE VI.**

When the Judge is absent from a Division of the District and a certificate stating that fact, signed by the Clerk of the Court, shall be delivered to the Referee therein, the Referee is authorized and empowered to direct the business of the bankrupt to be conducted for a limited time by the Receiver or Marshal, and to order the Receiver or Marshal to sell at public or private sale such perishable property of the estate as cannot, without great loss or deterioration, be kept until the Trustee is appointed and qualified.

**RULE VII.**

Each of the counties composing the Northern Division of the Eastern Judicial District of Missouri, is hereby designated as a "Referee's District," under and pursuant to section 34 of the Act. The Referee for the District of Marion county is directed and authorized to act as Referee in all Referee Districts in the Northern Division of the Eastern Judicial District of Missouri in which the services of a Referee may be required, and in which at the time said services are required to be performed, the office of Referee for that District may be vacant. Each of the counties composing the Southeastern Division of the Eastern Judicial District of Missouri, is hereby designated as a "Referee's District." The Referee for the District of Cape Girardeau county is directed and authorized to act as Referee in all Referee Districts in the Southeastern Division of the Eastern Judicial District of Missouri in which the services of a Referee may be required, and in which at the time said services are required to be performed, the office of Referee for that District may be vacant. Each of the counties composing the Eastern Division of the Eastern Judicial District of Missouri, and not including the City of St. Louis, is hereby designated as a "Referee's District." The City of St. Louis is hereby designated as a Referee's District, to be known as the District of St. Louis. The Referee for the City of St. Louis is directed and authorized to act as Referee in all Referee Districts in the Eastern Division of the Eastern Judicial District of Missouri in which the services of a Referee may be required, and in which at the time said services are required to be performed the office of Referee for that District may be vacant.

**RULE VIII.**

The Referee to whom any case has been or may be hereafter referred, shall be empowered and authorized to order the examination of the bankrupt or any other designated person upon the application of any officer, bankrupt or creditor, in accordance with the provisions of sections 7, 21 and 58 of the Bankrupt Act.

**RULE IX.**

The money of bankrupt estates on deposit in designated depositories shall be drawn out only by check or warrant signed by the Trustee or Trustees of the estate and countersigned by the Referee acting in the case. There shall be written or printed on the face of each check so drawn a brief statement of the general purpose for which the disbursement is made and the Trustee or Trustees of each estate shall keep a record of all checks drawn by him in the manner prescribed in General Order XXIX.

**RULE X.**

No paper prepared for filing shall be received unless it is legibly written or printed on paper of the size commonly called "legal cap," with a margin of at least one and one-half inches on the upper end of each page and with a margin of one inch on the left of each page. No such paper shall be less than one sheet and shall be properly endorsed with the style and number of the case and the character of the paper filed.



**RULE XI.**

Upon the entry of an order of adjudication of bankruptcy, unless otherwise ordered by the Court, the case shall be forthwith referred generally to the Referee for the district in which the bankrupt has his principal place of business, resides or has his domicile and after such reference the Referee is authorized to fix the time when, and place where, he will act upon matters arising in the case.

**RULE XII.**

All notices required to be given by this Act shall be served by mail, unless otherwise required by law or the order of the Court.

**RULE XIII.**

The Clerk shall cause to be prepared for the use of Referees, and deliver to them upon application, blank forms of process, summons and subpoenas, properly attested with the signature of the Clerk and the seal of the Court, as required by General Order III.

**RULE XIV.**

The Referee is authorized to permit an amendment of the petition and schedules upon the application of the bankrupt; and the Referee may, upon his own motion, require the bankrupt to amend the schedules.

**RULE XV.**

When a Trustee desires to procure an order for the sale of the property of the bankrupt, or any part thereof, such Trustee shall file with the Referee acting in the case a petition in accordance with the requirements of General Order XVIII, describing the property to be sold and praying that the Referee make an order directing the sale of the same in such one of the modes prescribed in said General Order XVIII as the Trustee may deem for the best interest of the estate. Upon the filing of such petition (unless it appears that the property sought to be sold is of such a perishable nature that there will be a loss if the same is not sold immediately and without notice to the creditors), the Referee shall give notice by mail to the creditors of the bankrupt by addressing such notices to them respectively at their places of abode or addresses as stated in the bankrupt's schedules, of the fact of the filing of such petition, and that the same will be acted upon on a day to be named in such notice, which day shall not be less than ten days after the day of mailing said notice. Upon the day fixed for the hearing of such application the Referee may, after due hearing, make an order directing the Trustee to sell the property described in the petition, or any part thereof, either at public or private sale as may appear to the Referee to be for the best interest of the estate; or the Referee, in his discretion, may continue such application to a later day to be fixed by him.

**RULE XVI.**

Trustees shall deposit all moneys and funds of the estate in the depository designated for that purpose, and the moneys so deposited shall only be withdrawn upon an order of the Court or the Referee, in accordance with the requirements of the General Orders and Rules in Bankruptcy.

**RULE XVII.**

When any witness shall attend before the Court or the Referee, in response to a subpoena or other process in any proceeding in bankruptcy, such witness shall make

claim to his fees and mileage, if any, to the Clerk of the Court, who shall make an entry in a book to be kept for the purpose of the amount allowed such witness, and tax the same as costs accruing in the cause.

**RULE XVIII.**

Where the proper administration of a bankrupt estate renders it necessary for the Trustee to secure the services of an attorney, the Trustee is authorized to employ an attorney to represent the bankrupt estate, but no Trustee shall employ more than one attorney or firm of attorneys, without first securing an order from the Referee, authorizing him to do so.

**RULE XIX.**

When an attorney shall be entitled to the allowance of a fee for professional services rendered the bankrupt, the petitioning creditors in involuntary proceedings, or the Trustee, shall file with the Referee a petition stating the nature and character of the services performed by him and the amount to which he deems himself entitled therefor, and praying that the same may be allowed him. If any party is represented by more than one attorney they shall all join in any petition for the allowance of attorneys' fees. The petition shall not be acted upon by the Referee until it has remained on file for at least five days. The Referee shall consider such petition and the objections thereto, if any, of any party in interest, and shall allow the attorney or attorneys such sum as may be just, and the same shall be paid by the Trustee when he has funds available for that purpose.

**RULE XX.**

Within the first month after their appointment, and at the expiration of every period of two months thereafter, the Trustee shall file with the Referee a report in writing stating the property which has come into his hands during such period, the part thereof, if any, which has been disposed of and how disposed of; the amount of money which has been received by him and from what sources received; the amount of money paid out and on what account disbursed; the amount of money on hand; the condition of any suits or other controversies affecting the property of the estate to which the Trustee is a party or in which he is interested, together with such additional statements concerning the assets of such estate as may be necessary to a correct understanding of the true condition thereof.

**RULE XXI.**

Preparatory to the declaration and payment to creditors of the final dividend in any estate, the Trustee shall prepare and file with the Referee a statement showing:

1. The gross amount of money on hand.
2. The amount to be deducted therefrom on account of debts having priority over dividends and including: (a) taxes; (b) the actual and necessary cost of preserving the estate subsequent to the filing of the petition; (c) costs of administration, including Court costs, attorneys' fees, sums due officers for fees, or commissions earned, or expenses incurred; (d) wages due to workmen, clerks or servants having priority; (e) other debts, if any, entitled to priority by the laws of the State or the United States.
3. The net amount to be distributed to general creditors by way of dividend.

**RULE XXII.**

When an estate has been fully administered the Trustee shall file with the Referee a final report stating that such estate has been fully administered and praying to be discharged from his trust. The Trustee shall file with such final report

an account, duly verified by affidavit, showing in detail the amount of money received by him as Trustee, the amount disbursed and on what account disbursed, with proper vouchers for all disbursements where it is practicable to secure such vouchers. Upon the filing of such final report and account the Referee shall call a final meeting of creditors, upon a day to be named by him, not less than fifteen days after the day on which said report and account are filed, and the Referee shall state in the notice given creditors of such final meeting that the Trustee has filed his final report and accounts, and that the same will be acted upon at said meeting. The Trustee shall attend before the Referee at the time and place fixed for such final meeting, and, if called upon to do so, shall offer any evidence or explanation required of him touching his conduct or the administration of the estate. At the time and place fixed for such final meeting the Referee shall audit said final account, and if it appears that the Trustee has fairly and honestly administered such estate, and duly accounted for all property or money coming to his hands, in accordance with law, shall approve such account and enter an order discharging the Trustee from his trust.

#### RULE XXIII.

If the schedule of a voluntary bankrupt discloses no assets, other than such as the bankrupt is entitled without regard to value, to hold as exempt, and if no creditor appears at the first meeting, the Referee may, by order setting out the facts, direct that no Trustee be appointed; but at any time thereafter a Trustee may be appointed if the Referee shall deem it desirable. If, in accordance with the foregoing provision, no Trustee is appointed for an estate, the Referee may order that no meeting of creditors, other than the first meeting, shall be called, and close the administration of the estate.

#### RULE XXIV.

Where the bankrupt has no property, other than such as is exempt, and no assets have come into the hands of the Trustee, it shall be unnecessary to call a final meeting of creditors and the Trustee shall be entitled to secure a discharge from his trust by filing a report with the Referee stating such facts and making it appear to the satisfaction of the Referee that there is no property of the bankrupt available as assets of the estate.

#### RULE XXV.

Referees shall be entitled to an allowance of two dollars from each estate administered before them, to cover necessary expenses incurred by them in the administration of the estate, for stationery, other than printed notices. Whenever it is necessary for any Referee to rent and maintain an office devoted exclusively to the conduct of bankruptcy business, such Referee shall be entitled to a pro rata allowance, not exceeding five dollars, from each estate administered before him on account of rent, said sum to be allowed and paid as other expenses incurred by the Referee. Referees shall be allowed the sum of five dollars in each case administered before them as a necessary expense for clerical aid.

#### RULE XXVI.

Where it appears from the schedule that the bankrupt has no property of value, other than such as is exempt, the Referee shall not be required to proceed with the administration of the estate or to take any action therein until the petitioner, or some other person for him, has deposited with the Referee the sum of twenty-five dollars to cover the costs of advertising, printing and other expenses incidental to the administration of the estate.

**RULE XXVII.**

Applications for discharge in bankruptcy shall be verified by the bankrupt and filed with the Clerk, and shall forthwith, without further order, be referred by the Clerk to the Referee in charge of the case, in which the application is made. Upon the receipt of said application the Referee shall immediately examine the same and ascertain if it be in proper form, and if not in the prescribed form, he shall return the same to the Clerk and notify the bankrupt or his attorney of record by mail of the defect therein, and upon the correction of said application, the Clerk shall forthwith return the same to the Referee. When the application is found to be in proper form, and when the administration of the estate is closed, or, in the opinion of the Referee, so far advanced as to render it proper for the Court to act upon the bankrupt's application for discharge, the Referee shall file with the Clerk a report stating whether or not the bankrupt has in all things complied with the Bankrupt Act, and that the administration of the bankrupt's estate has been closed, or, in his opinion, is so far advanced as to entitle the bankrupt to have his application acted upon. If specifications of objections to the bankrupt's discharge are filed, the Court may hear the issues thus presented, or, in its discretion, refer the matter to a special master for hearing and report as in equity cases.

**RULE XXVIII.**

When any person shall desire a review by the Judge of any order made by the Referee, he shall file with the Referee his petition therefor, pursuant to General Order No. XXVII within ten days of the date of making such order, and if such petition be not filed within said period of ten days, the person affected by such order shall be deemed to acquiesce therein, and to have waived all right to have the same reviewed by the Judge. For good cause shown the Referee may at any time, within ten days after the making of any order by him, extend the time within which a petition for review may be filed for a period not to exceed thirty days from the date of granting such extension of time.

**RULE XXIX.**

When the Court refers any matter arising in bankruptcy to a special master to take the evidence, or to report upon any specified issue, or issues of law or fact, for the information of the Court, the special master shall be entitled to a per diem compensation at the rate of ten dollars per day for each day he is necessarily engaged under said order of reference. Five hours shall constitute a day's work within the meaning of this rule, but the special master shall be entitled to a minimum fee of ten dollars for each matter so specially referred. The fees of the special master under each order of reference shall be stated in his report, and unless excepted to and disallowed by the Court, shall be paid by the Trustee when he has funds available for the purpose or by the moving party in the matter which is the subject of the reference. Exceptions to the report of a special master shall be filed within five days from the time of the filing of the report and if no exceptions are filed within that period, the report shall stand confirmed.

**RULE XXX.**

The Clerk shall be allowed a fee of seventy-five cents for each certified copy of the petition for discharge and order of notice thereon as expressed in Form 57 of Forms in Bankruptcy, mailed pursuant to any order of Court to the creditors of a bankrupt, the same to be taxed as costs, provided that if there be more than twenty creditors in any case, the fee for all such certified copies above twenty shall be



twenty-five cents each instead of seventy-five cents, and upon the filing of any application for discharge, the Clerk is authorized to require of the bankrupt a deposit of a sum of money sufficient to pay such allowance, the same to be refunded to the bankrupt in case there be found to be sufficient assets in the estate to satisfy the same.

#### RULE XXXI.

In case a petition is filed by a voluntary bankrupt which is accompanied by an affidavit under subdivision 2 of section 51 of the Act, it shall be the duty of the Clerk to file said petition without the payment of the fees provided by law. If the Clerk or the Referee to whom said petition is referred, has reason to believe such affidavit is false, he may file a certificate to that effect, and cause the bankrupt to be examined. If, upon such examination, the Referee reports in writing that the statements contained in such affidavit are false, and the bankrupt has or can procure money with which to pay said fees, such report shall be sufficient proof upon which to base proceedings under subdivision 4 of General Order XXXV.

#### RULE XXXII.

When a bankrupt shall desire to secure the confirmation of a composition with creditors, he shall deposit the money necessary to carry such composition into effect with the designated depository to the credit of the Judge of the Court. Where any part of the consideration to be distributed under the proposed compensation shall consist of promissory notes, he shall deliver such notes, properly executed, to the Clerk.

The application for the confirmation of a composition shall be filed with the Clerk, and such application shall be accompanied by the document, or documents, evidencing the acceptance of the requisite number of creditors, whose claims represent the required amount. Upon the filing of the application for confirmation, the Court will, upon application, fix a day for hearing the same, and it shall be the duty of the Clerk, at least ten days before the day so fixed, to forward by mail to each creditor named in the bankrupt's schedules, directed to their respective addresses as stated therein, a certified copy of the order fixing the date of such hearing.

The Clerk shall, at least five days before the day fixed for the hearing on said application, transmit said application to the Referee, to whom the case has been referred, and it shall be the duty of the Referee to file with the Clerk prior to the day fixed for the hearing, a report in writing, stating:

First. Whether the bankrupt has been examined in open Court, or at a meeting of his creditors, and filed in Court the schedules required to be filed by the bankrupt.

Second. The number and aggregate amount of the claims of creditors, which have been allowed against the estate of the bankrupt, and the number and aggregate amount of the claims of those creditors who have accepted in writing the proposed composition.

Third. The aggregate amount of the claims of creditors which are entitled to priority.

Fourth. The approximate costs of the proceedings in the event that the composition is confirmed, including the expenses and fees of the Trustee, Referee and Clerk.

If, upon the hearing, the Court shall make an order confirming the proposed composition, it shall be the duty of the Referee to whom the case has been referred to forthwith file with the Clerk the record of proceedings had before him in the case. Upon the filing of the record of proceedings had before the Referee, the Clerk shall proceed to make distribution, in accordance with the terms of the composition,



the amount to be distributed being computed upon the basis of the allowed claims, in case the claim has been allowed, and where the claim has not been presented for allowance, upon the amount stated in the schedule as owing to the creditor.

After making distribution in accordance with the terms of the composition, the Clerk shall file a written report, with proper vouchers, showing the amount of money, deposited to the credit of the Judge, the amount distributed to each creditor entitled to share in the distribution, and the amount paid out for costs or fees, and the amount, if any, returned to the bankrupt.

**RULE XXXIII.**

In all suits instituted by Trustees in Bankruptcy, process shall issue therein in the form of a subpoena directed to the defendant or defendants commanding them to appear upon a day to be named therein, not less than twenty days from the date of issuing such subpoena. The defendant shall appear and plead within five days after the return day named in the subpoena, provided he shall have been served with process at least fifteen days before that time, and if he shall not have been so served, then he shall appear and plead within twenty days after he shall have been served with process, and any counter pleading on behalf of plaintiff or complainant, shall be filed within five days thereafter. In trials in equity suits the testimony of witnesses shall be taken orally in open Court, except as otherwise provided by statute or the Equity Rules. In equity cases the complainant shall take any evidence he may be entitled to take within thirty days after the cause is at issue; the defendant shall take any evidence he may be entitled to take within thirty days thereafter; and complainant shall take any evidence he may be entitled to take in rebuttal within fifteen days thereafter. For good cause shown, and after notice to the adverse party, the Court may enlarge the time within which the parties are required to take such evidence. When a cause is at issue, and ready for trial, the Court, upon application, and after notice to the adverse party, will set the same down for trial upon a day to be designated by the Court.

**RULE XXXIV.**

On the filing of an application for trial by jury, by an alleged bankrupt, there shall be deposited with the Clerk at the time of filing such application, the sum of one hundred dollars, to cover the costs of the trial.

**RULE XXXV.**

No Receiver in Bankruptcy shall employ any attorney or counsel, except upon the order of the Court, or, if the Receiver is appointed by a Referee, upon the order of the Referee. Such order shall be granted only upon the petition of the Receiver, setting forth the name of the counsel whom he wishes to employ, the reasons for the selection of that person, and showing the necessity of employing any attorney or counsel.

**RULE XXXVI.**

(Adopted October 23, 1914.)

Petitions of Receivers in Bankruptcy for authority to employ counsel, final reports of Receivers in Bankruptcy, including applications of Receivers and their attorneys for compensation, and intervening petitions for reclamation of property in bankruptcy cases, when filed in this Court, shall stand referred and be forthwith transmitted by the Clerk to the Referee in Bankruptcy to whom the case has been referred, or, if no order of reference has been made, then to the Referee to whom the case would, in the ordinary course, be referred, and such Referee shall thereupon have full authority and jurisdiction to hear and determine all said matters, and to make such order or orders in respect thereto as may be appropriate in the premises.

## **DISTRICT OF NEBRASKA.**

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### **RULE I.**

#### **First Name of Bankrupt to be Set Forth in Full.**

In all petitions for an adjudication of bankruptcy, whether voluntary (see general forms Nos. 1 and 2) or involuntary (see general form No. 3), the first name of the alleged bankrupt must be given in full. And no adjudication of bankruptcy will be made, or other proceedings taken, by the Referee, until, either in the original petition or in amendment thereto duly made, the first name of the alleged bankrupt is set forth in full, and not by initial only.

### **RULE II.**

#### **Attorney Appearing Shall Sign Each Paper Offered for Filing.**

Except as to a paper filed by the bankrupt or such creditor in a proceeding in bankruptcy conducted by the bankrupt in person, or by creditor or creditors in person, every paper offered to be filed shall be signed on its face by the attorney or counselor appearing or having appeared for the party in whose behalf the paper is offered.

### **RULE III.**

#### **Duty of Trustee and Referee Concerning Taxes.**

In all cases wherein there are assets coming under charge of the Trustee, it shall be the duty of the Trustee forthwith to ascertain from the proper sources, what taxes, if any, are claimed to be due and owing by the bankrupt to the United States, to the State of Nebraska, to the county and town or city in which the bankrupt resides, or in which any part of the estate is situated for taxing purposes, and to make a written report thereof to the Referee, specifying the taxes upon each piece of property, so far as the same are shown by the tax lists; and the Referee shall in writing, pursuant to section 64 of the Bankrupt Act, order the payment by the Trustee of all taxes found by the Referee to be legally due and owing by the bankrupt according to said report.

#### **Notice of Hearing of Issues Concerning Taxes.**

But if any question arises touching the taxes, or any part thereof, claimed or reported to be due, the Referee, after due notice given by mail (section 58, Bankrupt Act) shall hear and determine the question at issue and order payment accordingly.

### **RULE IV.**

#### **Duty of Trustee and Referee Concerning Assets.**

In all cases where there are assets coming under charge of the Trustee, it shall be the duty of the Trustee to ascertain, and report to the Referee a schedule of all debts which are claimed to be entitled to priority of payment under the provisions of section 64 of the Bankrupt Act, together with the order of priority thereof, and the Referee shall make the proper order for payment thereof by the Trustee, according to said report.

But if any question arises with respect to payment of any one or more of such claims in accordance with said report of the Trustee, the Referee, after due notice given by mail (section 58, Bankrupt Act), shall hear and determine the question at issue, and order payment accordingly.

**RULE V.**

**Dividend Declared — Allowances for Costs and Expenses.**

In cases where a first dividend is declared within thirty days after the adjudication, under the provisions of section 65, of the Bankrupt Act, the Referee must make due and full allowance for the estimated costs and expenses that may be payable out of the estate (sections 40, 48 and 52, Bankrupt Act, and general order No. X), and for the amount necessary to pay the debts having priority (section 64, Bankrupt Act), and shall then declare a dividend at a per cent. which enables payment thereof to be made upon all claims, which up to that time have been scheduled or filed for allowance.

**RULE VI.**

**Payment of Dividend.**

When a dividend has been declared the Referee shall fix the time of payment thereof at a date enabling the giving by mail of ten days' notice thereof to the creditors; and said Referee shall thereupon prepare and deliver to the Trustee a dividend sheet (see general form No. 40) which shall contain the names of the creditors whose claims have been proved and allowed, their postoffice addresses, the amount of dividend payable to each creditor, the date when the dividend has been declared to be payable, and a statement of the person by whom the checks of the Trustee in payment of the dividend (see general order No. XXIX) are to be countersigned.

**RULE VII.**

**Checks to Pay Dividend — When and How Delivered.**

Upon receiving the dividend sheet from the Referee, the Trustee shall forthwith prepare and have properly countersigned the checks upon the depository necessary for the payment of the dividend declared as shown by the dividend sheet, and within ten days from the date of payment fixed by the Referee on the dividend sheet, shall deliver or forward to the creditors entitled thereto the check for the dividend declared.

**RULE VIII.**

**Checks — How and by Whom Signed.**

Except where otherwise directed by special order of this court, the dividend checks in each estate will be signed by the Trustee thereof, and countersigned by the Referee before whom proceedings are therein pending.

**RULE IX.**

**Clerk's Report Concerning Concluded Case.**

Upon receiving from the Referee his record of a concluded case, it shall be the duty of the Clerk to examine such record in order to ascertain whether it complies with the Bankrupt Act, the general orders thereunder and the rules of this court. If omissions are found therein, the Clerk shall notify the Referee thereof, to the end that the record filed by the Referee shall be complete.

**Final Order Closing Estate.**

When upon report of the Clerk it appears that a complete record has been filed, and that all things have been done necessary to properly close the estate, the District Court, or the Judge thereof, will make an order directing the final closing of the estate and the payment by the Clerk of the fees belonging to the Referee and Trustee.

**RULE X.**

**Date Bankrupt Becomes Subject to Order of Court.**

The day named in the order of reference for the attendance of the bankrupt before the Referee, shall, by said Referee, be entered in his docket as the date from which the

bankrupt becomes subject to the order of the court, as provided in general order in Bankruptcy No. XII.

**Duty of Referee — Notice to Bankrupt of First Meeting of Creditors.**

Unless cause to the contrary exists, the Referee may continue the time so named for the personal attendance of said bankrupt, to the time and place fixed for the first meeting of creditors, giving notice thereof by mail to the bankrupt.

**RULE XI.**

**Application for Discharge Shall Be Verified by Bankrupt and by Clerk Sent Forthwith to Referee.**

Application for a discharge on behalf of a bankrupt (see general form 57) shall be verified by the bankrupt and be filed with the Clerk of the District Court, and shall by said Clerk be forthwith sent to the Referee having charge of the bankruptcy proceedings of said bankrupt.

**Notice to Be Given by Referee to Creditors and Referee Concerning Application for Discharge.**

Upon receipt of said application in proper form the Referee shall forthwith notify the creditors by mail of the filing of said application, and that if they propose to show cause against such application, an appearance in opposition must be entered in writing before the Referee, at the place and on or before the date fixed in said notice; and said notice shall be published once (unless the Referee for good cause shall order further publication) in the newspaper wherein was published notice of first meeting of the creditors of said bankrupt. Notice of the time and place thus fixed, and that he is required then and there to attend, shall also, by said Referee be mailed or given in person to said bankrupt, and it shall be the duty of the bankrupt to attend accordingly.

**Referee's Certificate Returning Application for Discharge to Clerk's Office.**

If no appearance in opposition to such application for discharge is filed with said Referee, on or before the time thus fixed, said Referee shall forthwith mail to the Clerk the application for such discharge, with his certificate showing that due notice of the filing of application for such discharge had been given to said creditors, and duly published as directed; that no appearance in opposition had been filed on behalf of anyone; the amount, if any, of costs and expenses remaining unpaid to the Referee or Trustee, and also certifying whether the bankrupt has or has not fully complied with the requirements of the Bankrupt Act so far as known to the Referee.

If an appearance in opposition to said application for discharge is filed, the Referee shall retain the matter until the expiration of the ten days allowed (see general order No. XXXII)—after date fixed in said notice—for filing specifications of the ground of opposition (see general form No. 58); and at the expiration of said ten days the Referee shall send to the Clerk the application for such discharge, with his certificate showing the action had before him, and also showing so far as applicable, the several matters by last preceding paragraph required to be certified. Thereupon the Judge will fix the time and place for hearing the issues thus presented and will prescribe the notice to be given thereof.

**Time of Hearing Application for Discharge by Judge.**

If no appearance in opposition to the application for a discharge is filed before the Referee, or if filed, no specifications in support thereof are filed before the Referee within the ten days allowed therefor, said application for a discharge will then be for hearing before the Judge without further notice to the parties.



## DISTRICT OF COLORADO.

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### RULE I.

#### Bankruptcy Districts.

In order to appoint Referees and define the territory in which they shall have jurisdiction, pursuant to the Act of Congress approved July 1, 1898, entitled "An act to Establish a Uniform System of Bankruptcy Throughout the United States," the State of Colorado is hereby divided by counties into five bankruptcy districts, as follows, namely:

The first district shall be composed of the counties of city and county of Denver, Elbert, Jackson, Arapahoe, Adams, Yuma, Washington, Morgan, Phillips, Sedgwick, Logan, Weld, Jefferson, Park, Clear Creek, Gilpin, Boulder, Larimer, Grand, Routt and Moffat.

The second district shall be composed of the counties of El Paso, Teller, Douglas, Lincoln, Cheyenne and Kit Carson.

The third district shall be composed of the counties of Pueblo, Fremont, Chaffee, Custer, Huerfano, Otero, Bent, Prowers, Kiowa, Las Animas, Baca, Rio Grande, Mineral, Saguache, Costilla, Conejos and Crowley.

The fourth district shall be composed of the counties of San Miguel, Hinsdale, Ouray, Montrose, Gunnison and Delta.

The fifth district shall be composed of the counties of Mesa, Pitkin, Garfield, Rio Blanco, Lake, Eagle and Summit.

The sixth district shall be composed of the counties of Archuleta, La Plata, San Juan, Montezuma and Dolores.

### RULE II.

#### Petitions — Where Filed.

1. Petitions in bankruptcy shall be filed in the District Court at Denver, when the bankrupt resides or does business in any of the counties of city and county of Denver, Douglas, Elbert, Lincoln, Cheyenne, Kit Carson, Arapahoe, Adams, Yuma, Washington, Morgan, Phillips, Sedgwick, Logan, Weld, Jefferson, Park, Clear Creek, Gilpin, Boulder, Larimer, Jackson, Grand, Routt, El Paso, Lake, Eagle, Summit, Teller or Moffat.

2. Petitions in bankruptcy shall be filed in the District Court at Pueblo, when the bankrupt resides or does business in any of the counties of Pueblo, Fremont, Chaffee, Custer, Huerfano, Otero, Bent, Prowers, Kiowa, Las Animas, Baca, Rio Grande, Mineral, Saguache, Costilla, Conejos, Archuleta, La Plata, Montezuma, San Juan or Crowley.

3. Petitions in bankruptcy shall be filed in the District Court at Montrose when the bankrupt resides or does business in any of the counties of Dolores, San Miguel, Hinsdale, Ouray, Montrose, Gunnison, Delta, Mesa, Pitkin, Garfield or Rio Blanco.

4. In all petitions for adjudication of bankruptcy, whether voluntary or involuntary, the first name of the alleged bankrupt must be given in full. And no adjudication of bankruptcy will be made, or other proceeding taken, by the Referee until, either in the original petition or in amendment thereto duly made, the first name of the alleged bankrupt is set forth in full, and not by initial only.

5. In all cases wherein there are assets coming under charge of the Trustee, it shall be the duty of the Trustee forthwith to ascertain from the proper sources what taxes, if any, there are upon any real estate owned by the bankrupt or claimed to be due and owing by the bankrupt thereon, to the United States, to the State of Colorado,



to the county and town or city, and to make a written report thereof to the Referee, specifying the taxes upon each piece of property so far as the same is shown by the tax lists, together with the interest, whether legal or equitable, of the bankrupt in said estate, and the value of such interest, and whether or not, it is in his judgment, to the interest of the estate to pay such taxes in order to protect the property for the benefit of creditors and upon the receipt of such report, the Referee, if in his judgment the interest of the bankrupt in said estate justifies the payment of such taxes for the protection of the interest of the creditors, shall, in writing, pursuant to section 64 of the Bankrupt Act, order the payment by the Trustee of all such taxes found by the Referee to be legally due and owing by the bankrupt according to said report.

6. If any question arises touching the taxes, or any part thereof, claimed or reported to be due, the Referee, after due notice given by mail, shall hear and determine the question at issue and order payment accordingly.

7. In all cases where there are assets coming under charge of the Trustee, it shall be the duty of the Trustee to ascertain, and report to the Referee, a schedule of all debts which are claimed to be entitled to priority of payment, under the provisions of section 64 of the Bankrupt Act, together with the order of priority thereof, and the Referee shall make the proper order for payment thereof by the Trustee, according to the ascertainment of the Referee.

8. If any question arises with respect to payment of any one or more of such claims in accordance with said report of the Trustee, the Referee, after due notice given by mail, shall hear and determine the question at issue, and order payment accordingly.

9. If the bankrupt shall reside in one county and do business in another county, within the state, the place of his residence shall control. When several persons are charged in the same petition, the petition may be filed in the court having jurisdiction of the greater number, or where the business of such persons may be carried on.

### **RULE III.**

#### **Bankruptcy Courts.**

A court of bankruptcy may be held at a place other than that at which the Referee resides, when the convenience of parties requires it. In that case, the Referee's expenses of travel may be charged against the estate.

### **RULE IV.**

#### **Poor Persons.**

In case of a petition in bankruptcy, accompanied by an affidavit stating "that the petitioner is without, and can not obtain, money wherewith to pay fees," there shall be filed with the petition an affidavit of the petitioner, and of his attorney, stating that the petitioner has not paid and has not agreed to pay to his attorney any sum of money, or other thing of value, for the services of such attorney in such bankruptcy proceeding.

This rule shall not apply when the petitioner shall act for himself, without the assistance of an attorney.

### **RULE V.**

#### **Subpoena.**

Upon petition filed in Denver under section 3 of the Act relating to involuntary bankruptcies, against a person residing in the city and county of Denver, the Clerk shall issue a writ of subpoena returnable in ten days; when the person charged with acts of bankruptcy shall reside in any other county, the writ shall be returnable in fifteen days.

Upon petition filed in Pueblo under section 3 of the Act relating to involuntary bankruptcies, the Clerk shall issue a writ of subpoena, returnable in fifteen days.

Upon petition filed in Montrose under section 3 of the Act relating to involuntary bankruptcies, the Clerk shall issue a writ of subpoena returnable in fifteen days.

#### **RULE VI.**

##### **Discharge.**

A petition for discharge shall be presented to the Referee in charge of the case; the Referee shall appoint a meeting of the creditors to consider such petition, and give notice thereof as required by law and the rules of court; after such meeting shall have been held, the Referee shall report to the court the petition, and his proceedings under the same, and any opposition made to the discharge of the bankrupt. Following such report, the court will make order as the justice of the case may demand.

#### **RULE VII.**

##### **Costs on Discharge.**

In case of opposition to a discharge in bankruptcy and issue joined, upon which testimony shall be taken before a Referee, the cost of taking testimony, together with a charge of five dollars per day to be paid to the Referee for the time occupied, not exceeding three days, shall be paid by the opposing creditors. Such costs and fee to the Referee may be charged against the estate in a proper case.

#### **RULE VIII.**

##### **Notices.**

Notice to creditors, under section 58 of the Bankrupt Act, sent by mail, shall be deposited in a postoffice not less than two weeks prior to the day fixed in the notice.

#### **RULE IX.**

##### **Closing Cases.**

Upon receiving from the Referee his record of a concluded case, it shall be the duty of the Clerk to examine such record in order to ascertain whether it complies with the Bankrupt Law, the general orders thereunder and the rules of this court. If omissions are found therein, the Clerk shall notify the Referee thereof, to the end that the record filed by the Referee shall be complete. When, upon report of the Clerk, it appears that a complete record has been filed, and that all things have been done necessary to properly close the estate, the District Court, or the Judge thereof, will make an order directing the final closing of the estate and the payment by the Clerk of the fees belonging to the Referee and Trustee.

#### **RULE X.**

##### **Publication.**

Notices required to be published by the Bankrupt Act, shall be charged for and allowed at the rate fixed by section 3934, Revised Statutes of Colorado, 1908.

#### **RULE XI.**

##### **Oath of Bankrupt Before Discharge or Composition.**

Before the granting of a discharge or the confirmation of an offer of composition, the bankrupt shall make and file an oath with the Referee, that he has not done or suffered or procured to be done or been privy to any act, matter or thing specified in the Bankruptcy Act, as a ground for withholding a final discharge, or as invalidating the same. Such oath shall be made at the time or after filing petition for discharge or application for confirmation of composition.

## NORTHERN DISTRICT OF TEXAS.

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### RULE XXIX.

Creditors and the bankrupt may be represented in any proceedings in bankruptcy by attorneys authorized to practice in the District Courts of the United States. Attorneys may verify papers required to be verified in bankruptcy proceedings, or collect dividends, when they file with the Referee letters of attorney, stating the authority to them given; the verification of papers by attorneys must set out the authority by which they act; the reason why the creditor or bankrupt does not act in person, and that they have personal knowledge of the truth of the facts alleged in the paper verified, when such personal knowledge would be required of the bankrupt or creditor.

The attorney of record for the bankrupt shall not act for any creditor or for the Trustee in bankruptcy proceedings.

### RULE XXX.

All petitions, schedules and pleadings shall be written in a plain and legible hand, or typewritten, or printed on white paper of approximately legal size; all pleadings must be properly endorsed by the party filing the same, with the name of the court, the nature and character of the pleading, the title of the cause, and if the parties appear by attorneys, his name and address.

Petitions and schedules and petitions for discharge shall be signed with the full name of the bankrupt. Petitions and schedules not so signed may be filed and referred but the bankrupt shall forthwith file amendments to the petitions setting forth his full name and no further proceedings shall be had until such amendments shall have been filed.

The Clerk and Referee are charged with the duty of enforcing the observance of this rule.

### RULE XXXI.

Upon the filing of an involuntary petition in bankruptcy the petitioning creditor or creditors shall at the same time file with the Clerk, in addition to the original petition a duplicate copy of the said petition for each person against whom the proceeding is instituted, such duplicate copy or copies to be served upon said proposed bankrupt or bankrupts.

### RULE XXXII.

The fact that the bankrupt has no property or creditor described in a schedule shall be stated thereon in the proper place by writing the word "none" or such other explanatory memoranda as he may deem necessary and proper. Amendments to schedules may be made after they have been duly authorized and shall be filed in triplicate in the Clerk's office for the use of the Clerk, Referee and Trustee and no amendment shall be allowed except upon application, nor after a petition for discharge has been granted.

### RULE XXXIII.

Upon the filing of a petition for involuntary bankruptcy if, before the return day named in the writ of subpoena issued to the bankrupt, he confesses the allegations of the petition and waives service thereunder by answer filed with the Clerk, an adjudication on said petition may be had, as provided in section 18 of the Bankrupt Act, after the expiration of five days from the filing of such answer.



**RULE XXXIV.**

The day named in the order of reference for the attendance of the bankrupt before the Referee shall be the fifth day after the date of such order and shall by said Referee be entered in his docket as the date from which the bankrupt becomes subject to the orders of the court, as provided in general order in Bankruptcy No. 18. Unless cause for the contrary exists the Referee may continue the time so named for the personal attendance of said bankrupt to the time and place fixed for the first meeting of creditors, or to such time and place as he may find to be for the best interest of all parties.

**RULE XXXV.**

Any creditor or party in interest who may wish to examine the bankrupt or any witness at any meeting of creditors shall, after he has received notice thereof, forthwith notify the Referee in writing of his desire to examine the bankrupt or such witness and deposit with the Referee a sufficient sum of money, to be fixed by the Referee, to defray the expense of said examination and the expense of a stenographer, if a stenographer is deemed necessary by the Referee. If it shall appear that said examination has resulted in benefit to the estate the amount so advanced may be refunded upon proper application and order of the Referee to the party making such deposit.

**RULE XXXVI.**

When there are assets belonging to an estate in bankruptcy the Trustee shall forthwith ascertain what taxes are due and owing at the time of the filing of the petition, to the United States, to the State of Texas, or any other State or municipality, without regard to whether such taxes have been assessed against or a lien on the property of the bankrupt. He shall make a written report thereof to the Referee who shall order the payment by the Trustee of all taxes found to be legally due and owing by the bankrupt or such part thereof in the order of priority above named, if there be not sufficient funds to pay the whole amount, and all costs of the court; provided, such report shall remain on file at least twenty days to enable any party in interest to file any objections or exceptions to the same.

It shall be the duty of the Trustee to render all property subject to taxation belonging to the estate wherever situated to the proper assessor or collector and pay the same as part of the costs of the administration and make report thereof in writing to the Referee.

**RULE XXXVII.**

It shall be the duty of the Trustee when there are assets in his control to report to the Referee all debts claimed to be entitled to priority who shall make the proper order for their payment when a proper proof of claim has been filed by each claimant and allowed, as required by the Bankrupt Act.

**RULE XXXVIII.**

When a dividend is declared the Referee shall fix a date on and after which payments may be made by the Trustee, due notice of which shall be given by the Referee as required by section 58, subdivision 5.

On receipt of the dividend sheets as provided by section 39 (1) the Trustee shall forthwith prepare and have countersigned by the officer designated for that purpose, warrants upon the official depository for the sums of the amount named in the dividend sheets payable to the several creditors. The Trustee shall deliver the warrants on the day fixed for the payments of the dividend, or any day thereafter, to the creditors entitled to them. After the day when payment of dividends may be made the Trustee may deliver such warrants to the creditors or to the attorney or agent of the creditor who has filed with the Referee or Trustee a letter of attorney authorizing

him to receive such warrant. The Referee shall prepare the dividend sheets upon the report and recommendation of the Trustee that he has sufficient funds therefor after paying all debts and other claims entitled to priority and expenses, whether allowed or thereafter to be allowed. The Referee shall retain a copy of the dividend sheet issued by him to the Trustee, for the use of creditors and parties in interest seeking information, upon which shall be registered opposite the name of each creditor the number of the dividend warrant.

It shall not be necessary for the Referee to declare more than one dividend where the amount available for that purpose is five hundred dollars or less, but in such case he shall declare but one dividend and that after the lapse of three months from the date of adjudication.

#### RULE XXXIX.

All reports of the Trustees shall be filed with the Referee having jurisdiction over the case, they shall report the condition of the estate at the end of every month beginning with the date of their qualification, in which must be specifically stated the amount of cash received from all sources and the amount of their disbursements and such other matter as may be required of them by the Referee.

#### RULE XL.

##### Discharge.

The petition for discharge shall be in the form prescribed by the general orders of the Supreme Court of the United States in Bankruptcy and shall be verified by oath of the petitioner and filed in duplicate in the office of the United States District Clerk where the case is pending. Upon the filing of a petition in proper form for discharge the Clerk shall forthwith mail the duplicate thereof to the Referee to whom the case has been referred. On receipt of the petition for discharge the Referee shall fix a day on or before which the creditors or other parties in interest may show cause why the petition should not be granted. The Referee shall give at least thirty days' notice to all creditors as required by law, in which shall be stated that if the creditors or other parties in interest propose to show cause why the discharge should not be granted, they must, on or before the day fixed by him, as aforesaid to show cause, file with him their appearance, as provided in General Rule XXXII of the Supreme Court of the United States in Bankruptcy. The Referee shall also cause a like notice to be published at least once in the newspaper designated by the court, in the county of the bankrupt's residence, for that purpose, at least one week before the day on which the creditors are required to appear and show cause.

#### RULE XLI.

If no opposition to a petition is filed with the Referee on or before the day named in the notice to the creditors, or, if filed and no specifications in support thereof are filed before him within thirty days allowed as provided in General Order XXXII of the Supreme Court of the United States, the Referee shall, unless the Judge directs otherwise, forthwith mail to the Clerk of this court at Dallas the petition for discharge with his certificate showing that due notice of the filing thereof has been mailed to the creditors and also has been published as directed, that no opposition has been filed by any one, stating the amount of unpaid costs and expenses in said cause, if any, and also whether the bankrupt has or has not complied with the Bankrupt Act so far as to him known. The petition for discharge will then stand for hearing before the Judge without further notice to the parties.



**RULE XLII.**

If opposition to the petition for discharge is filed on or before the day fixed by the Referee, he shall, unless the Judge directs otherwise, proceed to hear the same and report the facts together with his findings thereon. Accompanying his report shall be the duplicate petition for discharge, all pleadings and depositions considered by the Referee, together with a statement of all costs, paid and to be paid, by any party in the proceeding. After the certificate has remained on file at least ten days the Clerk will notify the bankrupt and all contesting creditors or their attorneys of record by mail of the time and place fixed for the hearing.

**RULE XLIII.**

When a discharge is granted in a case pending in any other division of the district than the Dallas division the Clerk at Dallas shall transmit as soon as may be, the order of discharge together with all papers pertaining to the same to the Clerk of the division where the suit was originally instituted. The order of discharge shall be duly recorded by the Clerk thus receiving same and shall be kept among the other papers in the case.

**RULE XLIV.**

Before a discharge is granted if it appears that the estate is not ready to be closed the bankrupt may be required to deposit a sufficient sum of money with the Referee to meet the costs that may thereafter accrue which are properly chargeable against him, the same to be refunded to him out of the estate if sufficient funds come into the possession of the court for that purpose, by an order of the Referee; upon the receipt of any petition for discharge by the Referee to which there is opposition by creditors the Referee shall require each party to deposit with him sufficient money to defray the costs thereof.

**RULE XLV.**

If, after notice of final meeting of creditors to pass on the trustee's final report and account, some of the creditors appear and file exceptions to the same, the final account of the trustee shall stand as approved by the referee and the trustee be discharged by proper order of the referee.

**RULE XLVI.**

The filing fees of the Referee and Trustee shall be paid by the Clerk upon receiving the Referee's certificate that the case has been closed or dismissed. The commissions of the Referee shall be paid by the Trustee when the Trustee is entitled to his commissions for disbursements, as provided in section 40 as amended by the Act of 1910, and the fees for filing fees shall be due and payable when such claims have been allowed or disallowed by the Referee and when there are sufficient funds belonging to the estate available for that purpose. The Clerk shall be entitled to his filing fee immediately upon the filing of the petition in the case. Where there are no assets and no Trustee has been appointed, in accordance with general order 15, the case shall be deemed closed for the purpose of payment of the filing fees of the Referee and Trustee when a discharge has been granted or refused the bankrupt or a composition has been confirmed. If no application for a discharge has been made the case will be deemed closed for the purpose of said fees at the expiration of two months from the date of adjudication.

**RULE XLVII.**

Offers of composition in a bankruptcy case must comply with the law and forms and upon being filed with the Clerk shall be at once referred by him to the proper Referee. The Referee shall, if he deems proper, call a special meeting of creditors and

give notice thereof to each creditor and if said offer be accepted in the manner prescribed by section XII, subdivision B, the Referee shall make an estimate of the consideration to be paid by the bankrupt to his creditors, the money necessary to pay all debts entitled to priority and the costs of the proceeding and require the deposit thereof in the designated depository subject to the order and to the credit of the Judge. When the deposit has been so made the bankrupt may file in the Clerk's office his motion to confirm said composition, in duplicate, the duplicate of which shall be immediately referred to the Referee who shall immediately give statutory notice thereof, in conformity with the provisions of General Order XXXII of the Supreme Court. If there be no appearance in opposition to the confirmation of the composition the Referee shall report that fact and keeping in view the provisions of Clause D of section XXII, he shall further report his recommendations thereon to the Judge. If any creditors appear in opposition to the composition and file specifications thereof, as provided by said General Order, the Referee shall proceed to hear the same and file his report containing his conclusions and recommendation accompanied by the pleadings and the evidence submitted to him upon such hearing and his certificate that the notices, wherever required, have been given as required by the Bankrupt Act and the rules of this court.

#### **RULE XLVIII.**

All reports of Referee shall remain on file in the Clerk's office at least five days before they will be taken up and considered by the Judge.

#### **RULE XLIX.**

The order confirming a composition shall be in the form prescribed by the General Orders of the Supreme Court of the United States Form No. 103, and shall be entered of record in the office of the Clerk of the proper division and a certified copy thereof delivered to the depository will be sufficient authority for it to transfer the funds deposited to the credit of the Judge to the Trustee or other officer designated for the distribution of the consideration.

#### **RULE L.**

##### **Distribution of Deposit.**

Upon the confirmation of a composition the Clerk shall notify the Referee who shall then cause to be prepared checks or warrants to be signed by the Trustee and countersigned by the Referee in the same manner as is usual in the administration of bankruptcy estates where dividends are declared and paid.

(Note.—The foregoing rules as to compositions shall not be intended to direct or control the proceedings in cases where offers of composition are made before adjudication but such cases shall be controlled by such orders as the court may make in that behalf.)

#### **RULE LI.**

##### **Notice of Receiver's and Trustee's Commissions.**

Ten days' notice shall be given of all applications of receivers and trustees to be allowed their commissions but no notice shall be necessary in cases where the application shows that the maximum commissions of such officers will not exceed fifty dollars.

#### **RULE LII.**

##### **Return of Filing Fees.**

Fees deposited by the petitioner in involuntary cases or by others than the bankrupt himself in voluntary cases shall be returned by the trustees in all cases where sufficient funds for such purpose come into the hands of the trustee.

**RULE LIII.**

Whenever the office of a Referee is vacant or its occupant is absent or disqualified and the Judge is absent from the judicial district, the Referee holding an appointment under this court whose office is nearest and most convenient to the district of such absent or disqualified Referee shall temporarily fill the vacancy unless he himself is absent or disqualified, in which case any other Referee may temporarily fill the vacancy. The court will apportion the fees and expenses of the Referees in such cases upon proper application.

The foregoing rules of practice in the United States District Court for the Northern District of Texas, Fifth Circuit, are hereby adopted, and all rules and orders in conflict herewith are hereby rescinded.

This December 15, 1914.

## NORTHERN DISTRICT OF ALABAMA.

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It is hereby ordered that the following Rules of Practice in Bankruptcy be and hereby are adopted as the Rules of this Court, to become effective July 1, 1916.

It is further ordered that all existing Rules of Practice in Bankruptcy not hereby adopted be and the same will become void and of no effect on and after the 30th day of June, 1916.

It is further ordered that the Clerk will enter these Rules on the Minute Book of the Court.

W. I. GRUBB, *Judge*.

May 27, 1916.

### RULE I.

#### Forms of Petitions and Schedules.

All petitions must be either printed or typewritten, and shall show the full address of the bankrupt, including street and number. The schedules attached must be in single sheets of ordinary legal cap size. Schedule "A" must show, either in legible manuscript, or typewriting, the names of the creditors alphabetically arranged, their addresses, the character and consideration of the debt, placed in separate ruled columns, the amounts of the debts being carried out in a column properly ruled, the columns of debts footed up, and the totals carried forward. For disregard of this rule allowance of compensation to the attorney for the bankrupt for preparing and filing schedules may be refused.

### RULE II.

#### Schedules in Involuntary Cases Referred to Referees.

In involuntary cases referred by the clerk to the referee, the referee shall, if the bankrupt fails within the time prescribed by law to file his schedules, as soon as practicable, make an order and cause a copy thereof to be mailed to, or personally served upon the bankrupt, to file in the court by a day named in said order, schedules in triplicate, under oath, and in the form hereinbefore prescribed, of all his creditors, giving their names, addresses, the amount due each, the consideration of the debt, and what security, if any, is held for the same; also a full and complete schedule of all his assets, showing the character, condition and location, and estimated value of each item; and in case such bankrupt be a corporation, such notice shall be directed to, or served upon the secretary or treasurer thereof, or upon such officer, agent or employee as shall have charge, or have had charge of the books of account of the corporation.

### RULE III.

#### Proceedings Upon Petitions in Forma Pauperis.

When the petition of a proposed voluntary bankrupt, accompanied by an affidavit averring that the petitioner is without and cannot obtain the money with which to pay the filing fees required by the Act and the Three Dollars (\$3) provided for by these rules, is offered for file, the clerk may, under oath, examine the petitioner, or his attorney, or both, touching the facts set forth in said affidavit. If from such examination it appears that the petitioner has, or can obtain the money with which to pay said filing fees, the clerk shall not be required to file the said petition unless ordered to do so by the court, or upon the payment of the fees, or unless a satisfactory arrangement with the court acting through the referee is made for future payment of such fees and expenses.



**RULE IV.****Reference of Cases.**

In the Southern Division of the Northern District of Alabama, the clerk in making distribution between the referees of cases filed shall classify separately all involuntary cases and all voluntary cases in which the bankrupt schedules assets in excess of the amounts which he could claim as exempt under the laws of Alabama, on the one hand, and all voluntary cases in which the assets scheduled by the bankrupt are equal to or less than the amount of his exemptions, on the other hand. The cases so filed of the first class shall be referred to each of the referees alternately, and the cases so filed of the second class shall be separately referred alternately to each of the referees by the clerk, upon filing.

**RULE V.****Jurisdiction of Referee on Referred Cases.**

Whenever a case shall be referred to a referee, either by special order of the Judge, or by the certificate of the clerk, the same shall be considered and treated as before and within the jurisdiction of the referee for all purposes, proceedings and orders that may be necessary or required in the case, including the appointment of receivers, and the granting of restraining orders, but excepting orders confirming compositions and granting discharges, as to which the jurisdiction of the Judge is exclusive.

**RULE VI.****Notice to Creditors.**

The referee shall cause notice of the first meeting of creditors to be published at least once, and mailed to each creditor as scheduled, at the place of residence as given in the schedule; and of all subsequent proceedings and hearings in the cause, as to which notice is required by the Act, or the rules of practice of this court, he shall cause notice to be mailed to each of the creditors as provided by law, or to their attorneys of record. When the length of time of notice is not prescribed by the Act or by any rule, the referee shall in his order fix such time as in his judgment shall seem best. The certificate of the referee filed with his record shall, in all cases and for all purposes, be evidence that notice has been published and mailed as required by the Act, the rules, or the order of the court.

**RULE VII.****Place of Meetings.**

When from an inspection of the schedules filed, or otherwise, it is made to appear to the referee that it will be most convenient for the parties in interest, the referee shall appoint the meetings of creditors to be held at the office of the referee, or at such other convenient place as he may select.

**RULE VIII.****Setting Off Exemptions.**

It shall be the duty of the referee, as soon as practicable after the adjudication, to set off and allow as exempt to the bankrupt the property claimed by him, if the same is exempt as prescribed by the Act, whenever no trustee has been appointed, or when it appears from the condition and character of the estate that there will be no other duty for a trustee to perform other than the collection and receipt of the property claimed as exempt, and the setting apart of the same to the bankrupt.

The claim of the bankrupt for such exemptions shall be contained in his schedules as prescribed by subdivision 8 of section 7 of the Act; and, if not so contained, the bankrupt shall not claim exemptions as matter of right.



**RULE IX.****Rule Nisi Touching Assets in Possession of Third Person.**

Whenever it shall be made to appear to the referee that any property belonging to the estate of an adjudged bankrupt is in the possession or under the control of any person other than the bankrupt, it shall be his duty to issue an order directed to such person or persons commanding them to appear before him on a day to be named and show cause, if any there be, why such property should not be surrendered to the bankrupt court, or to its receiver or trustee, in case a receiver or trustee has been appointed; and in the event it shall appear that the property in question is property belonging to the estate of the bankrupt, and which the court has jurisdiction to administer, he shall order such person to surrender the same, and he may also order a writ of seizure to issue by the clerk under the seal of the court in the usual form directed to the marshal of the district in which the property is situate commanding him to take possession of such property, and hold the same subject to the orders of the court, or he may order the receiver or trustee as the case may be to take possession.

**RULE X.****Enforcement of Orders.**

(a) Where a final order of court made by the Judge or a referee is a fixed liability to pay a certain sum or sums of money, or to do a certain defined act or acts, satisfaction or enforcement may also be compelled by the ordinary process of execution, writ of assistance and of sequestration and other court process.

(b) No payment by way of dividend, allowance, or other distributive share of an estate in bankruptcy, or delivery to a bankrupt of his exemptions, shall be made, if the person or party to whom payment or delivery otherwise should be made is in default with, or liable to, the estate in bankruptcy, until such default or liability is discharged. Such dividend, allowance or distributive share shall be applied by the court to, or towards, discharging such liability, and only the excess over be paid to such person or party.

(c) Property allowed to a bankrupt as exempt shall bear the necessary expense of its protection and preservation, and, if such expenses are not paid by the bankrupt, so much thereof may be sold under order of court as shall be sufficient to pay such expense and the expense of selling.

**RULE XI.****Service of Notices and Orders Issued by Referee.**

The referee may designate any person to serve any order or notice issued by him, and the return of service by the person so designated, properly verified, shall be deemed and treated as sufficient service to support any subsequent action or orders predicated thereon.

**RULE XII.****Proceedings on Review From Referee.**

In all cases in which a review is allowed by the Bankrupt Act to the District Judge from any decision or ruling of the referee, the party seeking the appeal must within five days after the ruling or decision, file in writing with the referee his petition for review, and thereupon it shall be the duty of the referee, if in his opinion a review is authorized by the Act, to certify the review to the Judge as provided by the Act and General Orders; but if the referee shall be of the opinion that no review is authorized by the Act, he shall so endorse upon the petition therefor, and the party to the petition may apply to the Judge in Chambers within ten days for a writ or order in the nature of a certiorari to the referee. A review shall not operate as supersedeas unless so ordered by the referee or the Judge, and bond may be required if supersedeas is ordered.

**RULE XIII.**

**Bonds of Receivers and Trustees.**

All bonds of receivers and trustees shall be kept on file in the office of the clerk of the court. When such bonds are approved by referees, they shall be transmitted forthwith to the clerk of the court who shall file the same and enter a record thereof in the bankruptcy dockets.

**RULE XIV.**

**Depositors.**

Banking institutions as depositors for moneys of bankruptcy estates shall be designated by orders entered for that purpose, and the clerk shall keep a list of authorized depositories open to the inspection of the public and shall furnish a copy thereof to each referee in the district.

**RULE XV.**

**Deposits of Receivers and Trustees.**

Referees, receivers and trustees shall deposit all moneys coming into their possession in designated depositories to their credit as follows:

“..... Referee, Receiver or Trustee  
(*Name of Referee, Receiver or Trustee*)  
of ..... Bankruptcy No. .... ”  
(*Name of Bankrupt*)

Receivers and trustees, upon the selection of a depository, shall in each case advise the referee in charge thereof of the name of such depository and shall also state in each report the name of the depository or depositories in which balances in their possession are on deposit.

**RULE XVI.**

**Checks.**

The referee before whom a case is pending is designated as the one to counter-sign all warrants and checks for the withdrawal of money from the depository under rule XXIX of the General Orders, unless otherwise specifically ordered by the Judge. The referee shall, except as to checks issued in conducting the business of the bankrupt, verify the correctness of all checks as to names and amounts before countersigning the same, and shall mail all checks countersigned direct to payees or attorneys authorized to receive the same. Before dividend checks are mailed, the referee shall enter, or cause to be entered, the amounts and dates of payment thereof in the proper columns of the claim docket.

**RULE XVII.**

**Payment of Filing Fees by Trustee.**

The trustee, in any case where he has money belonging to the bankruptcy estate, sufficient to pay the whole or part of the filing fees and other costs taxed in the clerk's office, may be ordered forthwith to deposit such money with the clerk of the court, to be by him applied to the payment of such fees and costs in the case.

**RULE XVIII.**

**Payment of Referees' Fees.**

The fee of Fifteen Dollars (\$15.00) provided by Section 40 of the Act of Congress relating to bankruptcies shall not be payable to the referee unless there is a general reference, or some question relating to the estate, or composition, or discharge is referred to the referee. The fee of Fifteen Dollars (\$15.00) for the referee prescribed in said Section 40 shall be payable within ten (10) days after each case has been closed; and for such purpose a case shall be considered as closed when an order is

made that no trustee be appointed, as prescribed by General Orders in bankruptcy XV of the Supreme Court of the United States, and in cases of composition when the composition is confirmed and the case dismissed according to Section 12e of said Act.

#### **RULE XIX.**

##### **Deposit for Publishing Notices and for Other Expenses.**

Upon the filing of a petition in bankruptcy, the bankrupt shall deposit \$3.00 with the clerk or the referee, as indemnity for the cost of publishing notices, clerical hire, stationery and other expenses necessarily incurred by the referee, and the receipt of such deposit shall be accounted for by the referee in the manner set forth in rule XX.

#### **RULE XX.**

##### **Accounts of Referees.**

Every referee shall keep in a well-bound book suitable for the purpose an itemized account showing all expenses necessarily incurred, by him for clerk hire, in publishing or mailing notices, in traveling, in perpetuating testimony, or other expense necessarily incurred in the performance of his duties. Such account shall also show all amounts received by the referee by way of reimbursement for such expenses, including the deposit of \$3.00 in each case provided for in rule XIX.

On the first Tuesday in each month every referee shall submit to the Judge an itemized statement under oath of all amounts received for expenses and all disbursements made on account thereof during the preceding month.

#### **RULE XXI.**

##### **Costs in Hearings Before Referees.**

On hearings before the referees, unless otherwise ordered, the unsuccessful party litigant must pay the costs and expenses of such proceedings, and execution may issue for such costs.

On hearings before referees the unsuccessful party must pay the costs and expenses of the proceedings taxed against him, and deposit with the referee not less than the sum of Seven and 50/100 Dollars, before the referee is required to file or allow a petition for review. In the event the cost and expenses of the proceedings and the making of the certificate shall exceed the sum of Seven and 50/100 Dollars, then the petitioner for review must deposit a sufficient sum with the referee to cover the costs and expenses and the estimated cost of the review.

#### **RULE XXII.**

##### **Commissions of Referees and Trustees.**

The commission of referees shall be based on the amount of moneys disbursed to creditors, and the maximum allowance to trustees for commission shall be based on all moneys disbursed or turned over to any person, including lien holders, as is provided by the Bankruptcy Act. Such commissions of the referee and trustee shall not be payable in full until the order of final distribution has been made by the referee. Partial payments, however, may be made on such commissions during the course of administration, but in no instance shall such payments exceed the amount of commission that has accrued on the total amount of moneys actually disbursed or payments actually made.

#### **RULE XXIII.**

##### **Receivers' Reports and Accounts.**

Immediately upon the appointment and qualification of a trustee, the receiver shall turn over to said trustee all the money and property in the receiver's possession,

taking the trustee's receipt therefor. The receiver shall file his report and account within ten days after the election of the trustee, unless such time be extended by the Judge or referee upon proper application and showing.

**RULE XXIV.**

**Reports and Accounts of Trustees.**

Every trustee shall file with his final report an account duly verified showing in detail the amount of money received by him as trustee, the amount disbursed and on what account disbursed, and the amount of funds remaining in his possession. Upon the filing of such final report and account, the referee shall call a final meeting of creditors upon a day to be named by him not less than ten days after the day on which said report and account are filed. At such final meeting of creditors the referee shall audit the account of the trustee, and shall enter an order approving the same, if it is found to be correct. At said final meeting the referee shall also pass upon all petitions for fees and allowances and shall order the final distribution of all funds in the hands of the trustee. Such funds shall be disbursed in open court at such final meeting or forthwith thereafter.

After all funds have been disbursed by the trustee in accordance with the orders of the referee, the trustee, unless final distribution was made in open court as above provided, shall file a supplemental report, and if it appears that the trustee has fairly and honestly administered said estate and duly accounted for all property or money coming to his hands in accordance with law, the referee shall enter an order discharging the trustee from his trust.

**RULE XXV.**

**Referees' Dockets and Record Books.**

Every referee shall keep a docket with a suitable index, in which shall be entered by cases the names of creditors and their attorneys, amounts scheduled, amounts claimed, dates on which claims are filed, amounts allowed, and amounts of dividends declared and dates of payment thereof.

Every referee shall also keep a docket, separate and distinct from that above mentioned, in which shall be entered the dates and character of all papers filed, all orders made, the dates and purposes of all meetings of creditors, and a record of all other proceedings before the referee. At the close of each case the referee shall prepare a transcript of the entries in this docket to which shall be attached all orders and the papers relating thereto and dividend sheets, arranged in chronological order and followed by a certificate that the case is closed, and the same shall be securely fastened between suitable covers. Such papers shall constitute the record book of the referee provided for in Section 42-a of the Bankruptcy Act, and the same shall be forthwith filed with the clerk of the court together with all papers on file in the referee's office.

**RULE XXVI.**

**Files of the Clerk's Office.**

No order signed by the Judge shall be delivered or transmitted to a referee, attorney, or other person, until the same has been filed and recorded in the office of the clerk of the court. However, if the Judge deems it advisable, an order may be made in duplicate and the duplicate delivered or mailed to the referee having charge of the case, pending the filing and recording of the original order.

No attorney or other person shall take or carry away from the clerk's office files in any case or any order or paper belonging to the same without having obtained permission of the Judge, or the clerk by his direction, and when the files in any case or any order or other paper belonging thereto are taken under such permission, a card



shall be placed in the file box by the clerk of the court showing the date on which the files or portions thereof were removed and the name of the person to whom the same were delivered.

#### **RULE XXVII.**

##### **Attorneys and Fees of Receivers and Trustees.**

(a) No receiver or trustee shall employ an attorney without having obtained authority by written order from the Judge or referee upon written application setting forth the necessity for such employment. Petitions for the allowance of attorneys' fees shall show in detail the amount and character of all services performed, and no attorney for a receiver or trustee shall be allowed compensation out of the assets of the estate for services other than for such as are reasonably necessary and of a strictly legal character.

(b) But one attorney's fee shall be allowed for representing the petitioning creditors; but one attorney's fee shall be allowed for representing the receiver or receivers; but one attorney's fee shall be allowed for representing the trustee or trustees, and but one attorney's fee shall be allowed for representing the bankrupt, and in each case such attorney's fees shall be for all services rendered by attorneys throughout the proceedings; and if any dispute arises between attorneys as to the distribution among themselves as to such fees, the matter shall be heard by the referee or the Judge and the apportionment as between themselves determined, *provided* temporary allowances may be made from time to time not to exceed the total fee which may be finally allowed.

(c) No allowance of any such fees for or on account of attorneys' services, or to a receiver or trustee, in a sum greater than one hundred dollars for his entire services shall be made or paid, except upon written approval of the Judge.

#### **RULE XXVIII.**

##### **Notice to Bankrupt Regarding Applications for Discharge.**

In each case in which an application for discharge has not been filed, the clerk of the court shall notify the bankrupt of that fact 30 days before the expiration of twelve months subsequent to the date of adjudication and shall advise him that such application can not be filed after the expiration of said period without permission from the Judge. The bankrupt shall also be advised in such notice of the amount of any fees or costs due and unpaid in the case.

#### **RULE XXIX.**

##### **Proceedings Upon Petition for Discharge.**

Upon the filing of a petition for discharge, the referee, in case the costs and expenses which have accrued in the cause have been paid, or otherwise to his satisfaction provided for, shall fix a time for the hearing of the same before the Judge in Chambers, as also a time within which parties in interest may enter appearance in opposition, and if no appearance in opposition shall be entered within the time limited, the referee shall so immediately certify to the Judge, and the order of discharge will issue as of course; but if appearance in opposition be entered within the time limited, and the specifications are filed as required by General Order XXXII, the referee will proceed thereafter to give notice to the bankrupt and to all creditors as prescribed by law, that he will proceed to take testimony touching the specification filed, which notice shall fix a date when the taking of the testimony shall be begun. Upon the completion of the testimony the referee shall certify the same and his conclusions of fact and law to the Judge for further action. For the purposes of taking such testimony and making such report all amendable defects or omissions in the specifications shall be considered as amended; and the pleadings, to meet the



testimony, shall thereafter be settled by the Judge upon the hearing. Provided, however, that the referee shall not be required to hold such reference, and take such testimony without first having the costs for taking the same, including the expense of a stenographer and typewriter, advanced and deposited with him. For good cause shown the referee may extend the time within which the taking of the testimony shall be concluded.

As soon as any certificate or report provided for in this rule is filed by a referee, the same shall be laid before the Judge by the clerk of the court.

### RULE XXX.

#### Proceedings Upon Proposed Compositions.

(a) A bankrupt desiring to offer terms of composition to his creditors shall express such desire in writing and file it with the clerk with the schedule of his property and the list of creditors required to be filed by bankrupts, if such schedule and list shall then not already have been filed. Thereupon the clerk will refer the case to the referee for preliminary hearing and report, who shall give ten days (10) notice thereof to creditors (1) for examination of the bankrupt, (2) for filing claims, (3) receiving and filing his offer of composition, with acceptances of creditors, (4) for filing and allowing claims not already allowed, (5) for hearing evidence upon the subject of whether or not the offer should be confirmed, and (6) reporting the same with his opinion thereon to the Judge concerning the offer and whether or not, in his opinion, it should be confirmed, and the estimated amount of consideration necessary to effect the composition, if confirmed. The bankrupt may file an amended offer of a greater consideration at such hearing or before or at the hearing for confirmation before the Judge. The opinion of the referee shall be advisory only, but it shall be his duty *ex mero motu* to investigate with care and report all matter, whether developed by strict legal testimony or not, which might influence or assist the Judge upon finally hearing the offer, and especially inquire into and report upon the points of whether or not there is reason to believe the bankrupt has made any fraudulent transfer or is concealing any assets. Additional testimony may be offered, by any person in interest, upon the final hearing before the Judge. On the day the report of the referee is filed with the clerk, the bankrupt shall file with the clerk his application for a confirmation, which day is the day when creditors are required to show cause as provided by General Order XXXII, of his offer as originally made or as amended. Thereupon the referee shall give ten days' (10) notice that such application will be heard by the Judge on a named day and hour. Though no creditors file specifications of opposition or make any objection to confirmation at or before the hearing, the confirmation of the offer shall not be made as of course; but the Judge shall fully inquire into the matter and refuse to confirm unless it is affirmatively shown to him that a decree of confirmation should be entered according to the provisions of section 12 of the Act.

(b) If the offer be confirmed the referee shall receive and distribute the consideration, and the case shall be thereafter considered as re-referred to him for such purpose and for filing and finally allowing claims, all of his orders being subject to review as in ordinary cases. If the consideration paid in is not sufficient to satisfy the offer as confirmed, the referee shall, from time to time, make, subject to review, orders to the bankrupt to pay in additional sums, and if such orders are not promptly obeyed, the referee, subject to review, may order a warrant to issue to the marshal to retake the estate and such substitutes thereof as may be found and hold the same for disposition under orders of the court. If any excess remains after the composition as confirmed is settled, it shall be returned to the bankrupt.

(c) Although a creditor be not shown on the schedule or list or named in the proceedings, he may nevertheless file his claim for allowance and participation, but if

he fails to do so, his rights, whatever they be, shall be such as if this subdivision of this rule did not exist.

(d) Notwithstanding the confirmation of a composition and delivery of the estate in bankruptcy to the bankrupt, jurisdiction of the court over the bankrupt and of the estate and substitutes thereof and of parts thereof is retained to perfect and complete the composition as confirmed, and any and all the process and writs issuable out of a district court of the United States may issue to make completely effective the composition as finally confirmed.

(e) All orders of the court acting through the referee shall be final unless annulled or modified on review taken within five days as in other cases.

(f) When the consideration is completely distributed and settlement made according to the confirmation, the referee shall make report containing itemized statement of receipts and disbursements and file the same as in the office of the clerk of the court.

#### RULE XXXI.

##### Instructions to Referees.

(a) Referees are directed to exercise an active supervision over trustees to prevent delay in the settlement of estates. The provisions of section 47 of the Bankruptcy Act, requiring that trustees make reports every two months, and of section 65, requiring dividends to be paid thirty days after the adjudication, if there is sufficient money applicable thereto to pay same, and thereafter whenever there is sufficient money to pay a dividend of 10 per cent., should be strictly enforced. If any trustee, after due notice from the referee, neglects to make such reports, or to pay such dividends, or unreasonably delays, in any respect, the prompt settlement of the estate, the referee in charge is directed to make certificate of the facts and upon it to issue an order, returnable before the Judge on any motion day, requiring the trustee to show cause why he should not be removed.

(b) Referees are directed to make a report to the court at the close of each fiscal year of all asset cases which have not been closed and which have been pending before them more than fifteen months. Such reports shall contain the title and number of the case, the date when it was referred, and a concise statement showing what substantial proceedings have been had in the case, and why it has not been closed.

## **EASTERN DISTRICT OF LOUISIANA.**

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It Is Ordered that the following rules be, and the same are hereby, prescribed and adopted as the rules governing the practice of this Court in bankruptcy proceedings:

### **I.**

#### **FIRST NAME OF BANKRUPT TO BE GIVEN IN FULL.**

In petitions for adjudication of bankruptcy, whether voluntary or involuntary, the name of the bankrupt must be given in full. No adjudication of bankruptcy will be made, nor other proceedings be taken by the Referee, until either in the original petition or in amendment thereto duly made, the first name of the alleged bankrupt is set forth in full, and not by initial only.

### **II.**

#### **SCHEDULES.**

The schedules of the bankrupt, and any amendment, shall state the names and addresses of the creditors and also the debtors of the bankrupt, in full, giving street number as well as post-office address.

### **III.**

#### **POWERS DELEGATED TO REFEREES.**

(a) Referees heretofore, or hereafter, appointed for the Eastern District of Louisiana, are hereby vested with all the jurisdiction and powers which, by the said Bankruptcy Act and the General Orders of the Supreme Court, promulgated at the October term, 1898, the Court or Judge may delegate to such Referees.

This general order shall operate in lieu of a special order in each case.

(b) Referees may make rules for the guidance of proceedings before them within their respective territorial jurisdiction, and may from time to time alter and amend the same; provided, that such rules shall not be inconsistent with the provisions of said Bankruptcy Act or the General Orders of the Supreme Court, or the orders or rules of this Court.

### **IV.**

#### **REFEREES TO REGULATE EVIDENCE.**

Referees shall pass and rule upon all questions pertaining to the admission or

rejection of evidence in all proceedings before them, and, if desired, shall note on the record all objections made to the rulings thereon; where testimony is excluded, they shall, if requested, note a brief statement, by the party offering the same, of the facts he expects to prove thereby.

Referees shall limit the enquiry before them to relevant and material matter; and, in cases where an examination is unnecessarily prolonged, the Referee may in his discretion, limit the time of such examination, or he may impose costs, including the fees of the stenographer and other expenses, upon the party or parties responsible for the improper prolongation, and may require provision to be made for the payment of said costs, fees and expenses.

## V.

### ALLOWING AMENDMENTS BY REFEREES.

Referees are authorized to permit amendments to the petition and schedules upon the application of the bankrupt; and Referees may, of their own motion, require the bankrupt to amend his petition and schedules.

All amendments shall be made by petition addressed to the Judge or the Referee, who shall enter thereon an order allowing said amendments.

The amendments desired shall be set forth in triplicate schedules duly signed and sworn to by the bankrupt, and shall be filed, together with the petition and order, in the Clerk's Office. Two of the amended schedules shall be mailed by the Clerk to the Referee in charge of the proceedings.

## VI.

### AUTHORITY OF REFEREES IN ABSENCE OF JUDGE.

Whenever the Judge is absent from the district, but not otherwise, the Referee may take such steps for the preservation of the bankrupt's estate as may be necessary, including the appointment of Receivers, the disposal at public or private sale of perishable property, and the issuing of restraining orders.

## VII.

### ATTORNEYS.

Trustees may employ attorneys when authorized by the creditors at any called meeting; but no attorney who has represented the bankrupt or any creditor in the proceedings shall be employed by the trustee, except for good cause shown.

No fees shall be paid attorneys until proof of debt for same is filed, the amount approved by the trustee, and the creditors given at least ten days' notice.

The employment of attorneys and the amount of their fees shall be in all cases subject to the approval of the Court.

Receivers shall not employ counsel except upon the authorization of the Court.

## VIII.

### DECREES OF REFEREES—WHEN SIGNED.

All decrees rendered by Referees shall be signed not sooner than three (3)



clear days after rendition, and shall become final ten (10) clear days thereafter, unless appealed from.

**IX.**

**ACCOUNTS OF RECEIVERS.**

After adjudication and reference every Receiver's account shall be sworn to and filed with the Referee not later than ten days after the trustee shall have qualified, unless the time for filing said account is extended by the Referee. After ten days' notice to the creditors, the said account shall be heard by the Referee. Oppositions to the same shall be in writing, and shall be filed previous to the day fixed for said hearing, and, if no oppositions be presented to the Referee, he may approve the account and discharge the Receiver.

**X.**

**REVIEW OF REFEREE'S RULING BY THE JUDGE.**

When a review by the Judge of any order, ruling or decision of a Referee is desired, an objection shall be made and noted on the record at the time of the ruling or the order objected to, and an assignment of errors shall be presented to the Referee for his signature within the time allowed for an appeal, which assignment of errors, when signed by the Referee, may be filed with the Clerk by any party in interest.

A failure to comply with this rule shall be held a waiver of the right to review, unless on special order thereafter made by the Referee or Judge. The opinion and decision of the Judge shall be returned by the Clerk to the Referee.

Whenever practicable, the Referee shall annex to the assignment of errors his reasons for the order, ruling or decision complained of.

**XI.**

**PETITIONS IN FORMA PAUPERIS.**

In case a petition is filed by a proposed voluntary bankrupt accompanied by an affidavit under subdivision 2 Section 51 of said Bankruptcy Act, it shall be the duty of the Clerk to file said petition without exacting the payment of the fees provided for by said Bankruptcy Act (Section 51, A.). The Clerk may request the Referee to examine into the truth of such affidavit, and the Referee may, of his motion, make such an examination.

If upon examination the Referee should find that the bankrupt is not entitled to relief from payment of the filing fees, as provided in the aforementioned section of the Bankruptcy Act, and that at the time of said examination the bankrupt has or can obtain the money with which to pay said fees, the Referee shall order him to pay said fees within a time specified by said Referee, and if the bankrupt fails to comply with said order, such facts shall be certified by the Referee to the Judge, for dismissal of the petition as provided in General Order XXXV (4) in Bankruptcy, adopted by the Supreme Court of the United States.



**XII.****INDEMNITY EXPENSES FOR REFEREES.**

Pursuant to Section 30 of the Bankruptcy Act of July 1st, 1898, and of Rules X and XXXV (2) of General Orders in Bankruptcy.

Until further orders, the Referees shall be allowed as indemnity for expenses incurred by them, the following rates:

1. Cash paid for advertisements.
2. For all clerical aid in preparing advertisements and notices to creditors of first meeting, mailing the same, and making proof thereof, keeping register, files and records, and preparing typewritten memoranda of proceedings, prior to the first meeting of creditors, including stationery, envelopes, printing, letters, messages and all petty expenses, five (\$5.00) Dollars.
3. For similar clerical aid, etc., in calling and holding meetings of creditors to consider offer of composition, Five (\$5.00) Dollars.
4. For similar clerical aid, etc., in calling and holding each and every other lawfully called meeting of creditors, Five (\$5.00) Dollars.
5. For use of office and for clerical aid and for taking and keeping notes and records of proceedings at each called meeting and each postponed meeting and at each hearing on interlocutory orders, or for other proceedings (\$3.00).
6. For any of the meetings as hereinabove provided for, the referee shall charge ten cents (10 cts.) for each notice in excess of twenty (20), the number of creditors in each case to be stated in the referee's final report to the court.
7. For all necessary clerical aid in the care of creditors' proofs of claims after filing, including endorsing, recording, arranging and preserving them, and exhibiting and furnishing information concerning the same as required by law, twenty-five cents (25 cts.) for each claim, to be paid out of the estate of the bankrupt.
8. For certifying each copy of orders or other papers twenty-five cents, (25 cts.).
9. Whenever the petition and schedules in a bankruptcy case shall be referred to the Referee, he shall give notice to the bankrupt or his attorney, of the amount of costs necessary to be advanced for the calling of the first meeting of creditors or any other necessary expenses incident to the administration of the estate, as provided under this rule; and the bankrupt, his attorney, or any other party who may advance these costs shall have the same refunded to him out of the assets of the estate, as provided in General Order X adopted by the Supreme Court of the United States.

**XIII.****FINAL ACCOUNTS OF TRUSTEES.**

The final account of the Trustee, in all cases, shall be sworn to and filed with

the Referee, who shall send notices, by mail, to the creditors of the time when and the place where said account will be examined and passed upon.

Trustees shall in their final accounts, marshal and rank all claims against the bankrupt in accordance with Section 64 of said Bankruptcy Act. The final account shall also state the gross amount of money on hand, and the several sources from which same has been obtained.

If taxes have been paid by the Trustee prior to the filing of the final account, or if taxes are due, the final account shall state what taxes have been paid or are due.

All objections to the final account shall be in writing, and shall be filed before the Referee previous to the time fixed for the examination of the account.

Where the bankrupt has no property, other than such as is exempt, and no assets have come to the hands of the Trustee, it shall be unnecessary to call a final meeting of creditors, and the Trustee shall be entitled to secure a discharge from his trust by filing a report duly sworn to, with the Referee, stating such fact and making it appear to the satisfaction of the Referee that there is no property of the bankrupt available as assets of the estate.

#### XIV.

#### SALES.

1. The Referee may order the sale of real or personal property at public or private sale, after due appraisement in accordance with section 70 b of said Bankruptcy Act. The appraisers shall be appointed by the Referee.

2. Real estate may be sold either for cash or partly on credit and partly for cash, the credit portion of the price to be secured by usual vendor's privilege, mortgage and other security clauses. All sales of real estate shall be made at the court house door in country parishes, at the Real Estate Exchange in the city of New Orleans, Parish of Orleans, or upon the premises, if the Referee so directs, after advertisement in the paper designated in the parish in which said property is situated, once a week for four weeks, unless for good cause shown, the sale or advertisement is otherwise directed by vote of the creditors or by order of the Referee.

3. All sales of personal property shall be made at such place and after such advertisement as the creditors may direct or the Referee order.

4. Upon vote or upon petition of a majority of the creditors, in number and amount, whose claims have been filed and allowed, the Referee may upon good cause shown, authorize the Trustee to employ a duly licensed auctioneer to sell the real estate or personal property, said auctioneer's compensation for the sale of real estate not to exceed two (2%) per cent on the first Ten Thousand (\$10,000.00) Dollars realized and one (1%) per cent on amounts in excess of Ten Thousand (\$10,000.00) Dollars. Upon sales of movables said compensation shall not exceed five (5%) per cent of the amount realized.

5. When property is burdened with liens or mortgages, same may be made clear of said liens and mortgages before being sold, by rule to cancel said encumbrances, to be heard before the Referee after notice to the lienors or mortgagors.

6. Lienors or mortgagors may bid upon such property when sold and upon special order of the Referee may use their valid lien indebtedness or part thereof by way of settlement of the purchase price.

7. The Referee may make or order sales of perishable property, at public auction, through an auctioneer duly appointed by him, or through the marshal, at such place and in such manner as the Referee may determine, but such sales must bring at least seventy-five (75%) per cent of the appraised value of said property, as provided by Section 70 b of the Bankruptcy Act.

8. All orders for the sale of real estate, together with a description of the property shall be recorded in the office of the Clerk of Court at New Orleans in the Sales Book kept by him.

## **XV.**

### **COMPOSITIONS.**

Bankrupts offering composition shall apply to the referee to call a meeting of creditors to consider same. After composition has been accepted by a majority of the creditors, according to law, the consideration to be paid to creditors, and the money necessary to pay all debts which have priority and the costs of the proceedings, shall be deposited in one of the designated depositories.

Application for confirmation of composition (form No. 61) shall be filed with the Clerk, accompanied by certificate of the Referee that Section 12 b has been complied with. The Clerk shall thereupon, notify all creditors by mail, to show cause within ten days why said composition should not be confirmed. If no objection is made within the time specified, the composition shall be confirmed as of course. The Clerk shall be entitled to 10 cts. for each notice sent to the creditors.

In case of opposition the matter shall be set for a hearing before the Judge, and all parties notified by mail, and he may either determine the matter or refer same to the referee as special master for hearing and report.

## **XVI.**

### **NOTICES: HOW SERVED.**

Notice of petitions or motions filed with the Referee for interlocutory or other orders in any Bankruptcy case shall be given as directed by the Referee.

Th person giving the notice shall make his return to the Referee in the form of an affidavit, with the copy of the notice annexed, showing the method of service.

## **XVII.**

### **DEPOSITORIES AND CHECKS.**

All funds coming into the possession of trustees and receivers shall be forthwith deposited in one of the designated depositories.

No money shall be withdrawn from the depositories except upon the check of the Trustee, countersigned by the Referee, and bearing the name of the person to whom payable, and the title of the cause.

In composition proceedings the funds necessary to pay all debts which have priority and the costs of the proceedings shall be deposited in the proper bank as herein provided, in the name and number of the bankruptcy case and to the order of the Judge, who shall direct by special order in each case, the party or

parties by whom such funds shall be withdrawn. A certified copy of said order, sent by the Clerk to the Bank where said funds are deposited, shall be authority for the withdrawal of said funds.

The Clerk shall furnish depositories with a copy of this rule.

**XVIII.**

**PROCEDURE ON APPLICATIONS FOR DISCHARGE.**

Petitions for discharge shall be filed with the Clerk who shall at once notify the trustee and all known creditors of the bankrupt, by mailing them copies of the petition and order, to show cause within thirty days why said discharge should not be granted, and shall publish said order once according to law. If no opposition be filed within the time specified, the discharge shall be granted as of course.

In case of opposition the matter shall be set for a hearing before the Judge, and all parties notified by mail, and he may either determine the matter or refer same to the Referee as special Master, for hearing and report.

The clerk shall be entitled to a fee of fifty cents for each copy of said petition and order.

**XIX.**

**BANKRUPT'S COSTS ON DISCHARGE.**

The bankrupt shall be entitled to receive out of his estate the costs necessary for his discharge, provided there are sufficient assets to first pay all other costs, and provided further, the trustee is requested in writing to set aside the same, before distribution of the assets, and application for discharge is made not later than sixty days after adjudication.

**XX.**

**FEES OF CLERK, REFEREE AND TRUSTEE—WHEN PAID.**

The Trustee's fee of Five Dollars, deposited with the Clerk, shall be paid to the Trustee upon the certificate of the Referee that the services of the Trustee have been actually rendered and that the case has been closed. He shall be paid such commission as may be allowed by the Referee, under Section 48 of the Bankruptcy Act, upon order of the Referee, as soon as same accrues and is earned. The Referee shall be paid his commission at the same time.

In every case, except where a petition in forma pauperis is filed, the Clerk shall be entitled, when the petition is filed, to receive the filing fee of ten dollars. The Clerk shall pay to the Referee the Fifteen Dollars deposited as fees of the Referee upon receiving the latter's certificate that the case has been closed and that his services have been rendered. Where there are no assets the case shall be deemed closed for the purpose of the payment of fees to the Referee and Trustee after the first meeting of creditors has been held.

**XXI.**

**DISMISSAL OF BANKRUPTCY CASES WHEN NOT PROSECUTED.**

The first meeting of creditors shall be called by the Referee to whom the proceedings in bankruptcy are referred, within the time specified under Section 55 of



the Bankruptcy Act, and should the Bankrupt, after notice from the Referee, as provided by Rule XII, 9, of this Court, fail to advance, or have advanced the costs necessary for the calling of said meeting, within the time specified by the aforesaid Section 55 of the Act, the Referee shall certify such facts to the Judge, for the dismissal of the proceedings in bankruptcy, for failure to prosecute.

## XXII.

### AS TO WITHDRAWAL OF RECORDS.

The Clerk shall not permit the record in any cause to be taken out of his office.

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The foregoing rules shall supersede all rules now in force and shall become operative on the 1st day of February 1910.

(Signed) RUFUS E. FOSTER,  
*Judge.*



## WESTERN DISTRICT OF WASHINGTON, N. D.

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### RULE I.

#### Records.

Referees shall keep minutes of all meetings of creditors and examinations of parties and witnesses and of all other proceedings conducted before them, and make lists of claims proved, and furnish typewritten transcripts of the minutes and lists of proved claims, in each case to be part of the record. The record in each case shall consist of the original petition, each paper filed including proofs of debt and depositions, all orders, whether made by the court, Judge, Clerk, or Referee, and the Referee's minutes. Each record shall be certified by the Clerk to be the complete record in the case.

### RULE II.

#### Records to be Bound.

The record in each case shall be bound in one or more volumes, not more than 800 sheets to be included in one volume. The volume shall be made by stitching or fastening the papers through the top margin so that the hinge will be at the top. If the complete record contains 100 sheets or less, heavy paper of good quality may be used for covers, volumes of more than 100 sheets must be substantially bound in leather or other material equal to leather in durability, and must be indexed.

### RULE III.

#### Size and Quality of Paper.

That records may be made conformably to Rules 1 and 2, all papers intended to be filed and all orders and transcripts must be printed or legibly written or typewritten without interlineations or erasures except slight corrections which must be attested by the Clerk or Referee, with his initials in the margin before filing. The paper used must be of good quality and not larger than half flat cap size, that is to say, eight and one-half inches wide and fourteen inches from the top edge to the lower edge, nor less than eight inches by twelve and one-half inches. Only one side of the sheet must be written upon, except that indorsements may be upon the reverse side. There must be a blank margin of at least one and one-half inches at the top and at least one inch wide on the left hand edge of each page. All papers must be plainly indorsed with the title and number of the case and the name or nature of the paper before filing. The Clerk and Referees shall refuse to file papers which do not conform to the requirements of this rule.

### RULE IV.

#### Expense of Making Up and Binding Records.

The actual expense of making transcripts of the Referee's minutes, and binding the record, must be paid by the bankrupt, or out of his estate, before a discharge will be granted. In involuntary cases where the decision is adverse to the petitioners, the expenses of completing and binding records will be taxed as costs against them.

**RULE V.****Letters of Attorney and Appearances of Attorneys for Creditors.**

Attorneys admitted to practice in this court or in the United States Circuit Court for this district, who represent any petitioner or creditor, must file a notice of appearance in writing and duly signed; other agents or attorneys in fact must file a general or special letter of attorney executed by their principals.

**RULE VI.****Address of Creditors.**

Schedules containing lists of creditors must state the residence of each, with particularity as to city or town, street and number, or the post-office address, if known.

**RULE VII.****Office Expenses of Referee.**

Referees shall be entitled to charge in addition to actual expenses incurred by them in each case, a reasonable amount to meet their expenses for office rent and furniture necessary for transacting their official duties and keeping safely the papers and records belonging to bankrupt estates, provided that the charge for office rent and furniture shall not exceed five dollars in a contested case of involuntary bankruptcy, nor three dollars in any other case.

**RULE VIII.****Custody of Papers.**

The original papers filed in the office of the Clerk shall not be taken from the Clerk's custody except by the Referee for use during the pendency of a reference, and while in the custody of the Referee they may be examined at his office, but shall not be taken from the custody of the Referee by any person on any pretext whatever, until the Referee himself shall return them to the Clerk's office.

**RULE IX.****Proof of Publication.**

Proof of publication of all notices required to be published shall be made by the affidavit of the publisher or business manager of the newspaper and must be accompanied by and refer to a printed copy of the notice published, and must state the name of the paper and place of publication and the date or dates of each appearance of the notice in the paper.

**RULE X.****Indemnity for Expenses.**

In each case referred the Referee may require as indemnity for his expenses a deposit of ten dollars in money from the petitioner or petitioners, which amount shall be accounted for, and any surplus remaining shall be repaid. If further proceedings are necessary after the amount of the deposit has been exhausted, the Referee may require a further advance from the moving party of an amount sufficient to cover whatever expenses may be necessary.

**RULE XI.****Expense Fee for Filing Claims.**

To cover the expenses of the Referee's office for clerical assistance in filing and listing claims, Referees will collect from creditors a fee of fifteen cents for each claim presented.

**RULE XII.**

**Time for Filing Claims Not Scheduled.**

Claims against a bankrupt estate, not scheduled by the bankrupt, must be presented to the Referee on or before the thirtieth day after the first meeting of creditors. Referees will send by mail to each creditor who shall have presented proof of his claim, a copy of each proof of debt not scheduled by the bankrupt; and to cover the expense for stationery and clerical assistance required in mailing such copy, they will collect from the person, firm or company presenting such unscheduled claim twenty cents for each copy to be sent.

**RULE XIII.**

**Opposition to Allowances of Claims and Preferences.**

Creditors and other interested parties having objection to the allowance of any claim against a bankrupt estate, or who wish to contest the validity or justness of any lien or priority of any debt of a bankrupt, must specify the grounds of their opposition in writing, and present the same to the Referee on or before the fifth day after the first meeting of creditors, as to all debts, liens and preferences scheduled by the bankrupt; and as to all claims not scheduled, the opposition must be presented to the Referee on or before the twentieth day after the mailing to creditors of copies of such additional claims, as required by the twelfth rule.

**RULE XIV.**

**Proceedings in Forma Pauperis.**

When the petition of a voluntary bankrupt is presented, accompanied by the prescribed affidavit, the Clerk will file the petition and docket the case. As the case progresses, the petitioner must pay the necessary expenses, and, before a final discharge will be granted, he must also pay the amount of compensation allowed to the Clerk, Referee, and Trustee, or else make a showing to the satisfaction of the Court that, by reason of ill health or circumstances of peculiar misfortune, he is a worthy subject of charity.

**RULE XV.**

**Referees—Their General Powers.**

There shall be and hereby is conferred upon each and all of the Referees in bankruptcy of the above named Court, authority and power to do and perform each and every act which courts of bankruptcy can do or perform (except as to questions arising out of the application of bankrupts for composition discharge) in every matter which may be hereafter referred generally at any state of the proceedings therein, unless in the order referring said matter the power and authority of the Referee shall be expressly restricted. And upon such general reference, the Referee to whom the matter shall have been referred shall have power and authority and it shall be his duty to proceed in the matter as the Judge of said Court might do or have done if the matter had not been so referred.

[While there is no written rule to that effect, it is the practice of the Court in this division of this district to require the bankrupt to file an affidavit known as the "Final Affidavit of Bankrupt," in which all those things which would be a bar to his discharge, as set out in section 14, subdivision B of the Act, are negatived, before an order of discharge will be signed.]

## **DISTRICT OF OREGON.**

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### **RULE I.**

#### **Review of Referee's Decisions.**

When any question is certified here for review of the decision of a Referee, the record so transmitted shall be filed by the Clerk, who shall forthwith notify the parties or their counsel; and unless the parties within ten days thereafter appear to request a hearing in this Court before the Court or Judge on the question so certified, the same shall be disposed of by the Court or Judge on the record, without further hearing unless ordered by the Court or Judge.

### **RULE II.**

#### **Practice on Objections to Discharge of Bankrupt.**

A. When specifications in objection to the discharge of a bankrupt are made a copy of such specifications shall, before the same are filed, be served upon the bankrupt or his attorney and proof of such service made upon the original, and the bankrupt may, within ten days from the date of such service, demur, answer or otherwise plead to such specifications, but not otherwise.

B. At the expiration of ten days from the filing of the specifications, the record so made up on such objections shall thereupon be forthwith, by an order filed by the Clerk, referred to the Referee having jurisdiction of the cause, as special master, to take the testimony for and against the specifications, and report the same back to this Court, together with his findings of fact and law.

### **RULE III.**

#### **Idem.**

Upon the coming in of the Referee's report, the procedure prescribed in Rule I shall apply in all contested applications for discharge as to a hearing upon the merits in this Court.

### **RULE IV.**

#### **Orders Made by the Clerk of Course.**

In all voluntary cases, when the Judge is in the district, and no objections are on file, the Clerk shall, upon filing the petition for adjudication, as of course, enter of record and file the order of adjudication and order referring the cause to the proper Referee; and in pauper cases and in cases where the costs incident to the bankrupt's petition for discharge are payable out of the estate, and in such other cases as moneys are, or may be, payable out of the estate for the purpose of administration, the Clerk shall enter the order for the payment of all such fees and costs; and when no objections are on file to the discharge of a bankrupt the Clerk shall also enter the order of discharge as of course.

### **RULE V.**

#### **Transmission of Trustee's Bonds and Lists of Claims.**

Referees are required to promptly transmit to the Clerk of this Court complete lists of all claims filed against estates before them for administration, and are likewise required to forward to the Clerk the bonds of Trustees in all cases.



**RULE VI.**

**Expenses of Referee—Indemnity for.**

In order to facilitate the prompt closing of "no asset" cases, the Referee may exact from the bankrupt an amount sufficient to cover the expense of mailing and publishing notices, as provided in General Order No. X, but no more, and upon failure of the bankrupt to pay such amount that fact may be certified to the Court for the proper action.

**RULE VII.**

**Additional Fees of Referee and Trustee.**

No compensation or fees in addition to those provided by law will be allowed to Referees or Trustees under the guise of "office expenses," "clerk hire," etc., and Referees are required to transmit to the Clerk a detailed account of expenses claimed by the Referee or Trustee incident to the administration of any estate for approval or disapproval, before such estate is finally closed and the record certified up.

Now, at this day, it is ordered that from and after this date the cost to be collected by the Clerk in bankruptcy proceedings for process and notices to creditors upon petition for discharge shall be the sum of twenty cents per notice for each notice sent—July 3, 1914.

**Review of Order of Referee—Time to File Petition and Record.**

In all cases in which a review by this Court of the action or decision of the Referee in bankruptcy is sought, the petition for review must be filed with the Referee within twenty days from the date of the order or action sought to be reviewed. And thereupon, the Referee, whose action or decision to be reviewed is sought, shall, within ten days from the date the petition for review is filed with him, file in this Court all the records and papers, or certified copies thereof, necessary to a hearing in this Court.

(Amendment adopted December 2, 1914.)

**Receivers in Bankruptcy Cases—Showing Required—Not to Incur Expense.**

Receivers shall not be appointed in bankruptcy cases in any event unless it is first made to appear by affidavit that such appointment is necessary in order to preserve the estate, pending the election of a trustee, and no Receiver when appointed shall incur any expense (except as shall be necessary to preserve the estate), either in making inventory, employing assistants or counsel or otherwise without first making application to the Court or Referee showing the necessity therefor, and obtaining authority to do so.

(Amendment adopted September 28, 1914.)



## NORTHERN DISTRICT OF CALIFORNIA.

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### RULE I.

The referee will not be allowed expenses on account of clerk hire, or for traveling or other expenses, to which he may be entitled under General Order XXXV, unless the claim therefor, accompanied by proper vouchers, when vouchers can be procured, is presented to and approved by the Judge.

### RULE II.

The clerk shall immediately upon receipt thereof deposit with a depository of public moneys of the United States, in trust, and to the credit of said clerk in his official capacity, all moneys collected by him for the payment of fees of referees and trustees, under the Bankruptcy Act, and shall on the first day of each regular term, present to the Court a statement, showing all moneys received by him during the preceding term, and also the balance in such trust fund; said statement to show in detail cases in which such moneys have been received, and in what cases disbursements have been made, and said statement and vouchers accompanying the same, shall be filed in Court.

### RULE III.

The petition by or against a person in bankruptcy, shall be presented and heard only in open Court; and all motions or applications for orders in any bankruptcy proceeding, except such as are addressed to the referee in bankruptcy, will be heard only at the beginning of the morning session of the Court.

### RULE IV.

When a petition for voluntary adjudication in bankruptcy is accompanied by an affidavit stating that the petitioner is without and cannot obtain the money with which to pay the fees allowed by law to the clerk, referee and trustee, the matter of the ability of the petitioner to pay such fees shall under this rule, and without further order, stand referred to the referee to whom the case in bankruptcy is referred, to take and report the testimony of the petitioner in relation to his ability to pay such fees.

### RULE V.

Checks or warrants drawn pursuant to No. XXIX of the General Orders in Bankruptcy, adopted and established by the Supreme Court of the United States, November 29, 1898, shall be countersigned by the referee having jurisdiction of the case to which the moneys so drawn against belong.

Copies of this rule and of said general order shall be furnished by the clerk of this Court to each depository within this district.

### RULE VI.

When there are no assets and no trustee has been appointed, and no application for a trustee is pending, after a meeting of creditors duly called, the case shall be deemed closed for the purpose of the payment by the clerk to the referee of the deposit for his services when a discharge has been granted or refused to the bankrupt, or when three months have elapsed after the first meeting of creditors without an application by the bankrupt for his discharge.

Where a trustee has been appointed, the case shall be deemed closed, and the deposit for his services paid to him on the confirmation of a composition, or an approval of the trustee's final account and payment of the final dividend, or upon the trustee's verified report that no assets have come into his hands or were discoverable. When the case is closed, if no trustee has been appointed, the deposit for trustee's services shall be paid by the clerk to the bankrupt, or to his attorney for the use of said bankrupt.

**RULE VII.**

Questions certified by the referee to the Judge of this Court for his opinion, shall be placed on the calendar for argument, and heard, and submitted to the Court for decision, at the opening of the Court on the first Saturday after the filing of the certificate with the clerk, unless otherwise ordered by the Court.

**RULE VIII.**

**Discharge and Composition.**

Application for the discharge of the bankrupt, or for confirmation of a composition, duly verified, should be filed in the first instance with the referee in charge, who will thereupon fix a day for the hearing before the Judge, which may be upon any Saturday at 10 a. m., and give the requisite notices thereof to all creditors or other persons interested, and thereafter transmit to the clerk of the Court two days prior to the return day, due proof of the service of such notices, together with the petition for discharge or composition. On the return day, the default of all creditors not appearing in opposition to the discharge or composition shall be entered. Upon due filing of written specifications of the grounds of opposition to the discharge or composition, the same shall, unless otherwise ordered by the Court, be referred to the referee in charge to take the proofs and testimony offered by the parties, and to ascertain and report the facts. The hearing thereon before the referee may be brought on by either party on four days' notice to the other.

**RULE IX.**

A petition for a review by the Judge of an order made by the referee, as provided in General Order No. XXVII of the General Orders in Bankruptcy, must be filed with the referee within ten days from the date of notice of such order, unless, for good cause shown, such time is extended.

**RULE X.**

A person entitled to file a petition for review, or a petition for the re-examination of any claim filed against the bankrupt's estate, shall at the time of filing, deposit with the referee, such sum as the referee may designate as required to cover the cost of such proceeding.

## **SOUTHERN DISTRICT OF CALIFORNIA.**

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### **RULE I.**

Checks or warrants drawn pursuant to No. XXIX of the General Orders in Bankruptcy, adopted and established by the Supreme Court of the United States, November 29, 1898, shall be countersigned by the Referee having jurisdiction of the case to which the moneys so drawn against belong. Copies of this rule and of said general order shall be furnished by the Clerk of this Court to each depository within the district.

### **\* RULE IX.**

It is ordered, that the Referees in Bankruptcy in said Court be, and are hereby vested with jurisdiction in all bankruptcy cases within the limits of their respective counties, to perform all the duties conferred on Courts of Bankruptcy, which Referees may be required or authorized to perform; except as otherwise provided by General Order in Bankruptcy, No. XII.

### **RULE XI.**

The Clerk shall deliver to the Referee a copy of the order of reference, or transmit the same by mail to the Referees having their offices outside of the city of Los Angeles, and thereafter all proceedings, except such as are required by the Bankruptcy Act, to be had before the Judge, shall be had before the Referee, who shall fix the time when and the place where he will act upon the matters arising in the case.

### **RULE XII.**

The petition for a discharge, or for a confirmation of a composition, must be filed with the Clerk of the Court. No discharge will be granted in any case until there has been filed with the Clerk a report or certificate of the Referee, to whom said case shall have been referred, that the bankrupt has in all things conformed to the requirements of the Act, and that he has committed none of the offenses and done none of the things prohibited in subdivision b of section 14 of the Act, and that he is in the opinion of the Referee, entitled to his discharge.

Adopted November 27, 1914.

### **RULE XIII.**

The order to show cause why a discharge should not be granted may be entered by the Clerk, or his deputy, and notice, stating the time and place of the hearing, must be given, as provided in section 58 of the Act, as amended June 25, 1910, to all known creditors and other persons in interest, by mail, and publication once, at least thirty (30) days prior to said hearing. If no creditor or other party in interest appears and opposes, the discharge shall be granted. In case a creditor or other party in interest desires to oppose the granting of the discharge, he shall appear on the return day, and thereafter file a verified specification of the ground of his opposition, as provided in General Order XXXII.

### **RULE XIV.**

All moneys deposited with the Clerk for the fees of the Referee and Trustee and the expenses of bankruptcy proceedings shall be deposited by the Clerk in a designated depository of the United States, in an account to be known as the "Bankruptcy Account" of the Clerk of this Court; said moneys to be subject to checks signed by the Clerk.

(Promulgated January 25, 1915.)

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\* No intervening rules in bankruptcy.

**RULE XV.**

Both in voluntary and involuntary cases the fees and commissions of Referees and Trustees shall be paid immediately after such fees and commissions accrue and are earned.

**RULE XVI.**

In each case referred to the Referee, the Referee may require as indemnity for his expenses, and be entitled to collect in advance of services to be rendered, and shall be allowed, costs and expenditures in accordance with the following schedule:

1. Amounts required to be paid for advertising.
2. For all clerical aid in preparing advertisements and notices to creditors of first meeting, mailing the same, and proof thereof, keeping register, files and records, and preparing typewritten memoranda of proceedings prior to the first meeting of creditors, including stationery, envelopes, printing, letters, messages and all petty expenses..... \$5 00  
(In the final account this item may be called "clerical aid, etc., prior to first meeting").
3. For similar clerical aid for each of the matters mentioned in section 58, subdivision a, to be paid by the person or persons at whose instance and request said meeting is held..... 5 00
4. If notices to creditors exceed 25 in number, in addition to the above for each notice in excess of 25 (the number of creditors to be stated) ..... 10
5. For clerical aid in taking and keeping notes and records of proceedings at first meeting of creditors up to choice or appointment and qualification of Trustee ..... 2 50
6. For every other meeting of creditors, including any and every adjourned meeting ..... 1 50
7. For clerical aid in taking and perpetuating testimony on the examination of the bankrupt or other persons before the Referee, the actual expenses of the stenographer, not exceeding \$10 a day, and when the same is transcribed then an additional rate shall be allowed of ten cents per folio for taking and transcribing.
8. For certifying question to the Judge for review, with necessary record.. 3 00  
and for making copies of orders or other papers, each..... 50  
if exceeding one page..... 25  
additional for each page, to be paid by the party ordering it.  
For certifying to any order..... 50  
For certificate of Referee on application for discharge..... 2 00

**RULE XVII.**

No Receiver or Trustee in bankruptcy heretofore or hereafter appointed or elected in any bankruptcy proceeding, in this district, shall hereafter employ an attorney at the expense of the bankrupt estate, except on the order of the Court or Referee, based on a petition showing the reasons and necessity for the employment, and the name of the attorney it is proposed shall be employed. Attorneys employed in violation of this rule shall receive no compensation.

Adopted November 19, 1915.

**RULE XVIII.**

Upon the filing of a petition for discharge in a bankruptcy matter, the bankrupt shall be required to pay to the Clerk the sum of two dollars to cover the cost of mailing notices to creditors.

**RULE XIX.**

No order to show cause why a discharge should not be granted in a bankruptcy matter shall be placed upon the calendar for hearing until the Referee's certificate of compliance and the affidavit of publication shall have been on file in the Clerk's office for five days prior to the date for hearing.



## CONVENIENT TIME TABLE OF PROCEDURE.

Subject.	Reference.	Period.
Necessary residence, domicile or principal place of business for filing voluntary petition.....Act.	Sec. 2 (1).....	Greater portion of 6 months next preceding.
Same, to adjudication in involuntary proceedings.....Act.	Sec. 2 (1).....	Greater portion of 6 months next preceding.
When order of adjudication may be entered upon involuntary petition.....Act.	Sec. 18e.....	On the next day following the last day upon which pleadings may be filed.
Time for publication.....Act.	Sec. 18a.....	Once a week for two consecutive weeks. Return day 10 days after last publication unless the Judge shall for cause fix a longer time.
Demand for jury trial.....Act.	Sec. 19a.....	At or before the time in which an answer may be filed.
When creditor may intervene.....Act.	Sec. 59f.....	At any time.
When answer or pleading must be filed.....Act.	Sec. 18b.....	Within 5 days after return day, unless extended.
Bankrupt to file schedules in involuntary proceedings.....Act.	Sec. 7 (8).....	Ten days after adjudication unless further time is granted.
When bankrupt is absent and cannot be found, petitioning creditors to file.....Gen.	Order IX.....	Five days.
When amendment of petition allowed.....Gen.	Order XI.....	In the discretion of the Court, if seasonably made. Relates back to time of filing original petition and does not advance such date under section 60 as relating to preferences.
Notice of sale by Receiver.....Act.	Sec. 55a.....	Fixed by local rules. Not less than 10 nor more than 30 days after adjudication, unless Court shall otherwise order.
First meeting of creditors; when held.....Act.	Sec. 58a.....	Ten days.
Notice of creditors of first meeting by mail.....Act.	Sec. 58b.....	At least one week prior to date fixed for meeting.
Publication of notice of first meeting.....Act.	Sec. 47 (10).....	Within 30 days after appointment and every 2 months thereafter.
Trustees' reports, when should be filed.....Act.	Sec. 54.....	Ten days after request.
Referee's reports.....Act.	Sec. 47 (11).....	As soon as practicable after appointment.
Trustees' report on exemptions.....Act.	Sec. 47 (8).....	At least 15 days before day fixed for final meeting of creditors.
Trustees' final report and account, when filed.....Act.	Sec. 47 (9).....	Within 10 days after declaration.
When Trustee shall pay dividends.....Act.	Sec. 58a (3), (4).....	Ten days.
Notice for special meetings and of sale.....Act.	Sec. 65b.....	Within 30 days after adjudication if money in estate exclusive of priority claims and probable claims to be filed equals five per centum of such allowed claims.
When first dividend should be declared.....Act.	Sec. 57n.....	One year from date of adjudication unless liquidated by litigation.
Time for filing proof of debt.....Act.	Sec. 21a.....	Before or after adjudication.
When examination of witness may be had.....Act.		



Discharge. When bankrupt may apply for.....	Act. Sec. 14a	.....	After one month and within next 12 months after adjudication.
Notice of hearing on discharge.....	Act. Sec. 58a	(9).....	Thirty days.
Petition for extension of time to apply for a discharge.....	Act. Sec. 14a	.....	Not after expiration of 18 months after adjudication.
When bankrupt may apply in New York for cancellation of judgment of record.....	N. Y. Debtor and Creditor Law, Chap. 12, Sec. 150..	.....	One year after discharge.
Composition. Application for confirmation.....	Act. Sec. 58a	(2).....	Ten days.
When liens may be invalidated.....	Act. Sec. 67c	.....	Four months.
Wages, when entitled to priority.....	Act. Sec. 64b	(4).....	When earned within three months before commencement of proceedings.
Petition to revoke a discharge.....	Act. Sec. 15a	.....	Within one year.
Petition to set aside a composition.....	Act. Sec. 13a	.....	Six months.
Review of Referee's order.....	Local Rules	.....	Usually within 10 days.
Petition to Circuit Court of Appeals to review in matter of law.....	Act. Sec. 24b	.....	Ten days by rule of Circuit Court of Appeals. In absence of such rule, within reasonable time.
Appeals in Bankruptcy proceedings.....	Act. Sec. 25a	.....	Ten days.
Appeals under Sec. 24-a.....	Rev. Stats. Sec. 1008, Act of March 3, 1891, Chap. 517, Sec. 11 and 26 U. S. Stat. at L. 829.....	.....	Six months.
Writ of error to Circuit Court of Appeals.....	26 Stat. at L. 828, Sec. 6..	.....	One year.
Writ of error to Supreme Court.....	Gen. Order XXXVI.....	.....	Reasonable time.
Certiorari.....	Act of March 3, 1891.....	.....	Thirty days.
Appeals to Supreme Court; Bankruptcy.....	.....	.....	One year.
Other appeals to Supreme Court.....	.....	.....	One year.

Page 877, insert at bottom of page:

In appeals, writs of error and certiorari in Supreme Court note, however, restrictions and changes brought about by Act of Jan. 28, 1915, 38 Stat. at L. ch. 22, pp. 803, 804, and Act of Sept. 6, 1916, ch. 448, § 6, and Supreme Court Rule No. 37, part 4, amended June 12, 1916.



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# GENERAL INDEX.

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# HAGAR AND ALEXANDER'S BANKRUPTCY FORMS

## SECOND EDITION

### ERRATA AND ADDENDA

Page 649, insert at bottom of page:

See Act of Sept. 6, 1916, ch. 448, § 6, and Act of Jan. 28, 1915, restricting appeals to Supreme Court.

Page 654, line 21, insert after figures "1133":

See Act of Jan. 28, 1915, 38 Stat. at L. 803, 804, ch. 22, restricting writs of error to Supreme Court; also Act of Sept. 6, 1916, ch. 448, § 6.

Page 657, line 15, insert after "Chap. 22":

Act of Jan. 28, 1915, restricting appeals and writs of error to Supreme Court; see also Act of Sept. 6, 1916, ch. 448, § 6, and Supreme Court Rule No. 37, part 4, as amended June 12, 1916.

Page 680, bottom of page, insert as follows:

See Act of Jan. 28, 1915, 38 Stat. at L. 803, 804, ch. 22, virtually repealing Sec. 25b.

Page 726, line 1, insert after word "treasurer" the following clause:

If the treasurer or corresponding officer is not within the district wherein the bankruptcy proceedings are pending the deposition may be made by some officer or agent of the corporation having knowledge of the facts.

Page 735, line 34:

See Act of Jan. 28, 1915, 38 Stat. at L. ch. 22, pp. 803, 804, restricting appeals to U. S. Supreme Court.

Page 762, line 15 [**Publisher's Note**]:

Following amendments have been made to Rules of Eastern District of New York under date of Dec. 5, 1916, after publication of the book:

By order of this court, Bankruptcy Rules 11, 12 and 16 were repealed and the following, Rule 11, adopted:

In cases where no assets appear, or where no exemptions are claimed, with respect to property of which a trustee might take physical possession, or where no creditor opposes the bankrupt's claim of exemption, if any proof of debt has been filed, the referee will not appoint a trustee while those conditions are unchanged. Such a case shall not be closed (other than to furnish a certificate to the bankrupt as to compliance with the statute) until the application for discharge has come before the court or the year for such application has elapsed.

Page 877, insert at bottom of page:

In appeals, writs of error and certiorari in Supreme Court note, however, restrictions and changes brought about by Act of Jan. 28, 1915, 38 Stat. at L. ch. 22, pp. 803, 804, and Act of Sept. 6, 1916, ch. 448, § 6, and Supreme Court Rule No. 37, part 4, amended June 12, 1916.

HAGAR AND ALEXANDER'S BANKRUPTCY FORMS

SECOND EDITION

ERRATA AND ADDENDA

Page 610, insert at bottom of page:  
See Act of Sept. 8, 1916, ch. 448, § 6, and Act of Jan. 28, 1917, restricting appeals to Supreme Court.

Page 624, line 27, insert after figures "1155":  
See Act of Jan. 28, 1917, 38 Stat. at L. 803, 804, ch. 22, restricting writs of error to Supreme Court; also Act of Sept. 8, 1916, ch. 448, § 6.

Page 627, line 16, insert after "Chap. 25":  
Act of Jan. 28, 1917, restricting appeals and writs of error to Supreme Court; also Act of Sept. 8, 1916, ch. 448, § 6, and Supreme Court Rule No. 27, part 4, as amended June 12, 1916.

Page 629, bottom of page, insert as follows:  
See Act of Jan. 28, 1917, 38 Stat. at L. 803, 804, ch. 22, restricting appeals to Supreme Court.

Page 726, line 1, insert after word "therein" the following clause:  
If the transfer or corresponding object is not within the district wherein the bankruptcy proceedings are pending, the objection may be made by some officer or agent of the corporation having knowledge of the facts.

Page 735, line 34:  
See Act of Jan. 28, 1917, 38 Stat. at L. ch. 22, pp. 803, 804, restricting appeals to U. S. Supreme Court.

Page 762, line 15 [Publisher's Note]:  
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In cases where no assets appear, or where no exceptions are claimed, with respect to property of which a trustee might take physical possession, or where no creditor opposes the bankrupt's claim of exemption, it may be ordered that the trustee will not appoint a trustee while those conditions are unchanged. Such a case shall not be closed (other than to furnish a certificate to the bankrupt as to compliance with the statute) until the application for discharge has come before the court on the year for such application has elapsed.

Page 877, insert at bottom of page:  
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